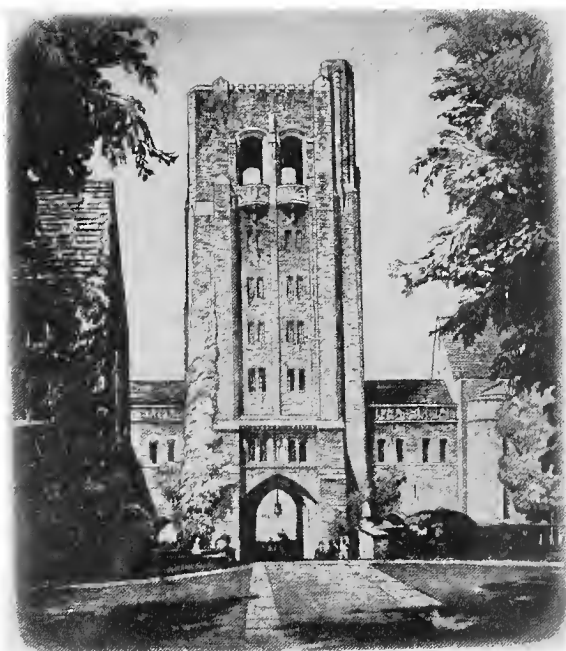




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THE PRINCIPLES

OF

NATURAL AND POLITIC LAW.

BY J. J. BURLAMAQUI,

COUNSELOR OF STATE, AND PROFESSOR OF NATURAL AND CIVIL LAW AT GENEVA.

From the Seventh London Edition.

COLUMBUS, OHIO:
JOSEPH H. RILEY AND COMPANY
PHILADELPHIA: J. B. LIPPINCOTT & CO.
1859.

M10925

S. D. THACHER, STEREOTYPER.

OSGOOD & PEARCE, PRINTERS.

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P R E F A C E .

THE following work is, with some slight modifications, a republication of Nugent's translation of the first, second, and third parts of Burlamaqui's admirable treatise on Natural and Politic Law. The author lived under a government whose constitution and laws were essentially different from our own. In illustrating the principles of law, he naturally drew his examples from the political system with which he was familiar, and used expressions which have reference to that system. The publishers have taken the liberty, in most instances, of changing those expressions, and substituting examples drawn from the operation of our own government. In other respects, the integrity of the original has been strictly preserved.

The author, J. J. Burlamaqui, was born at Geneva, in 1694. His father was Counselor and Secretary of State of that republic. In 1720, the son, on his return from his travels, was appointed professor of natural and civil law, in which post he continued a considerable number of years, till the republic thought proper to remunerate his long and eminent services, by raising him to the same dignity as his father. The great reputation which he acquired in his professorship, was less owing to his immense erudition, in which he equaled if not excelled all his predecessors, than to the quickness of his understanding, the clearness of his ideas, his sound and judicious views on the study of jurisprudence, and especially to the solidity of his principles on natural law and civil government.

He long contemplated writing a complete and full treatise on the law of nature and nations; but his occupations and infirmity prevented him from carrying out the design.

This treatise on the Principles of Natural and Politic Law was intended merely as an introduction to that science. He was so modest as to consider his work calculated only for young people; but it has proved to be a performance of general utility, and has secured the commendations of learned and eminent statesmen and lawyers. The great merit of the production consists in its always ascending to the original principles of the science of morals and politics, and gradually unfolding them in a forcible, clear, and methodical manner. The connection between ethics and jurisprudence, religion and politics, is dwelt on with singular force and beauty. Indeed, these sciences have the same basis and tend to the same end; their business is to unravel the system of humanity, or the plan of Providence with regard to man; and since the unity of this system is an unquestionable point, so soon as writers ascend to those principles, in order to view and contemplate the whole, it is impossible but they all should meet.

The author's method has nothing of the scholastic turn. Instead of starting new difficulties, he prevents them by the manner of stating his proposition; instead of disputing, he reconciles. Far from pursuing any idle or too subtle ideas, he follows nature, step by step, and derives his arguments from sense and experience. He unfolds his thoughts with the greatest perspicuity and order, in a plain, clear, and agreeable style, such as becomes a didactic work.

He died in 1750, preserving to the last the character of a Christian philosopher.

The publishers deem it unnecessary to make any apol-

ogy for presenting to the public a work the reputation of which is so well established. It is acknowledged by all that the perpetuity of our free institutions depends on the virtue and intelligence of the people. A popular treatise on the fundamental laws of social organization, which demonstrates the connection between morals and politics, shows that the rule which is obligatory on the individual should govern the action of states, illustrates the powers of government, and enforces the duties of citizens, cannot fail to be both interesting and useful.

COLUMBUS, O., Feb. 1859.

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THE

PRINCIPLES OF NATURAL LAW.

PART I.—GENERAL PRINCIPLES OF RIGHT.

CHAPTER I.

Of the Nature of Man, Considered with regard to Right—Of the Understanding, and whatever is Relative to this Faculty.

I. My design is to inquire into those rules which nature alone prescribes to man, in order to conduct him safely to the end, which every one has, and indeed ought to have, in view, namely, true and solid happiness. The system or assemblage of these rules, considered as so many laws, imposed by God on man, is generally distinguished by the name of *Natural Law*. This science includes the most important principles of morality, jurisprudence and politics; that is, whatever is most interesting, in respect as well to man as to society. There can be nothing, therefore, more deserving of the application of a rational being, of a being that has its perfection and felicity seriously at heart. A just knowledge of the maxims we ought to follow in the course of life, is the principal object of wisdom; and virtue consists in putting them constantly in practice, without being ever diverted from so noble a pursuit.

II. The idea of *right*, and much more that of *natural right*, is undoubtedly relative to the nature of man. It is from this nature, therefore, from the constitution and state of man, that we are to deduce the principles of this science.

The word *right*, in its original signification, means that which is *ruled* or directed. Right, therefore, in its proper and most general sense, and that to which all the others must be reduced;

is whatever directs, or is properly directed. This being premised, the first thing we have to examine is, whether man is susceptible of direction and rule in respect to his actions. That we may attempt this with a greater probability of success, we are to trace matters to their every origin, and ascending as high as the nature and constitution of man, we must there unravel the principles of his actions, and the several states that properly belong to him, in order to demonstrate afterwards in what manner, and how far, he is susceptible of direction in his conduct. This is the only method of knowing what is *right*, and what is not.

III. Man is an animal, endowed with understanding and reason; a being, composed of an organized body and a rational soul.

With regard to his body, he is pretty similar to other animals, having the same organs, properties, and wants. This is a living body, organized and composed of several parts; a body that moves of itself, and, feeble in the commencement, increases gradually in its progress, by the help of nourishment, till it arrives at a certain period, in which it appears in its flower and vigor, whence it insensibly declines to old age, which conducts it at length to dissolution. This is the ordinary course of human life, unless it happens to be abridged by some malady or accident.

But man, besides the marvelous disposition of his body, has likewise a rational soul, which eminently discriminates him from brutes. It is by this noble part of himself that he thinks, and is capable of forming just ideas of the different objects that occur to him; of comparing them together; of inferring from known principles unknown truths; of passing a solid judgment on the mutual fitness or agreement of things, as well as on the relations they bear to us; of deliberating on what is proper or improper to be done; and of determining consequently to act one way or other. The mind recollects what is past, joins it with the present, and extends its views to futurity. It is capable of penetrating into the causes, progress, and consequences of things, and of discovering, as it were at one glance, the entire course of life, which enables it to lay in a store of such things as are necessary for

Different actions of man—Faculties of the soul.

making a happy career. Besides, in all this, it is not subject to a constant series of uniform and invariable operations, but finds itself at liberty to act or not to act, to suspend its actions and motions, to direct and manage them as it thinks proper.

IV. Such is the general idea we are to form of the nature of man. What results from it is, that there are several sorts of human actions; some are purely spiritual, as to think, to reflect, to doubt; &c.; others are merely corporeal, as to breathe, to grow, &c.; and some there are that may be called mixed, in which the soul and body have both a share, being produced by their joint concurrence, in consequence of the union which God has established between these two constituent parts of man; such as to speak, to work, &c.

Those actions which either in their origin or direction depend on the soul, are called human or voluntary; all the rest are termed merely physical. The soul is therefore the principle of human actions; and these actions cannot be the object of rule, but inasmuch as they are produced and directed by those noble faculties with which man has been enriched by his Creator. Hence it is necessary to enter into a particular inquiry concerning this subject, and to examine closely into the faculties and operations of the soul, in order to discover in what manner they concur to the production of human actions. This will help us, at the same time, to unfold the nature of these actions, to assure ourselves whether they are really susceptible of rule, and how far they are subject to human command.

V. Let man reflect but ever so little on himself, sense and experience will soon inform him that his soul is an agent, whose activity displays itself by a series of different operations; which having been distinguished by separate names, are likewise attributed to different faculties. The chief of these faculties are the understanding, will, and liberty. The soul is indeed a simple being; but this does not hinder us, when we attend to its different ways of operating, from considering it as a subject, in which different powers of acting reside, and from giving different denominations to these powers. If we consider the thing in this man-

ner, we shall find it will give a greater exactness and perspicuity to our ideas. Let us remember, therefore, that these faculties are nothing else but the different powers of acting inherent in the mind, by means of which it performs all its operations.

VI. The principal faculty of the soul, that which constitutes the fundamental part of its being, and serves, as it were, for its intrinsic light, is the understanding. We may define it that faculty or power by which the mind perceives and forms ideas of things, in order to come at the knowledge of truth. Truth may be taken here in two significations; either for the nature, state, and mutual relation of things; or for the ideas agreeable to this nature, state, and relations. To have a knowledge, therefore, of truth, is to perceive things such as they are in themselves, and to form ideas concerning them conformable to their nature.

VII. We must therefore set out with acknowledging, as a fixed and incontestible principle, that the human understanding is naturally right, and has within itself a strength sufficient to arrive at the knowledge of truth, and to distinguish it from error; especially in things wherein our respective duties are concerned, and which are requisite to form man for a virtuous, honorable, and quiet life; provided, however, he employs all the care and attention that lies in his power.

Sense and experience concur to convince us of the truth of this principle; which is the hinge, as it were, whereon the whole system of humanity turns. It cannot be called in question, without sapping the foundation, and entirely subverting the whole structure of society; because this would be annulling all manner of distinction between truth and error, and between good and evil; and, by a natural consequence of this subversion, we should find ourselves reduced to the necessity of doubting of every thing; which is the highest pitch of human extravagance.

Those who pretend that reason and its faculties are depraved in such a manner as to be no longer capable of serving as a sure and faithful guide to man, either in respect to his duties, or particularly with regard to religion, do not reflect that they have

Operations of the understanding—Evidence.

adopted, for the basis of their system, a principle destructive of all truth, and consequently of religion. Thus we see that the sacred scripture, far from establishing any such maxim, assures us, that *when the Gentiles, who have not the law, do by nature the things contained in the law; these, having not the law, are a law unto themselves. Which show the work of the law, written in their hearts, their conscience also bearing witness.**

True it is, that a bad education, vicious habits, and irregular passions, may darken the mind; and that neglect, levity, and prejudices precipitate men frequently into the grossest errors in point of religion and morals. But this proves only that men may make a bad use of their reason, and not that the natural rectitude of the faculties is subverted. What we have still to say, concerning this point, will help to set it in a clearer light.

VIII. Let us proceed now to a closer inquiry into the operations of the understanding. The perception, or view and knowledge of things, is commonly formed by the concurrence of two actions; one from the object, and is the impression which this object makes on us; the other from the mind, and is properly a glance, or simple view of the soul, on the object it is desirous of knowing. But, as a first view is not always sufficient, it is necessary that the mind should apply itself for some time to a serious consideration of the object, to the end it may acquire a just knowledge of things, and form thereof exact ideas. This application, with which the soul continues to view the object in order to know it well, is called attention; and, if it turns itself different ways, to consider the object on all sides, this is termed examen or inquiry. We may therefore affirm, that the perception or knowledge of things depends entirely, in respect to the mind, on its natural vigor and attention.

IX. It is by these helps, drawn from his own fund, that man attains at length a clear and distinct knowledge of things, and their relations; as also of ideas, and the conformity of those ideas to their originals; in short, that he acquires the knowledge of truth. We give the name of evidence to this clear and distinct

*Rom. ii. 14, 15.

view of things, and of their mutual relations; a point to which we should be particularly attentive. For this evidence being the essential characteristic of truth, or the sure mark whereby one cannot help distinguishing it, the consequence is, that it necessarily produces such an internal conviction, as forms the highest degree of certainty. It is true, that all objects do not present themselves with so strong a light, and that notwithstanding the great care and application a man may use, all that he is frequently able to attain, is only a glimmering light, which, according to its strength or weakness, produces different degrees of probability and seeming truth. But this must be absolutely the case of every being whose faculties are limited; it is sufficient that man, in respect to his destination and state, is capable of knowing with certainty those things which concern his perfection and happiness; and moreover, that he is able to distinguish between probability and evidence, as also between the different degrees of probability, in order to proportion his assent to those differences. Now a person need but enter never so little into himself, and reflect on the operations of his mind, to be convinced, beyond any possibility of doubt, that man is really possessed of this discernment.

X. The senses, taken from the sensitive faculty, the imagination also, and the memory, must be all reduced to the understanding. In fact, the senses, considered in this manner, are nothing else but the understanding itself, as it makes use of the senses and organs of the body to perceive corporeal objects. The imagination likewise is nothing but the understanding, as it perceives absent objects, not in themselves, but by their images formed in the brain. The memory, in fine, is no more than the understanding, considered as possessed of the faculty of retaining the ideas it forms of things, and capable of representing them to itself, whenever there is occasion; advantages that principally depend on the care we take in repeating frequently those ideas.

XI. From what has been hitherto said with regard to the understanding, it follows that the object of this faculty of the soul is truth, with all the acts and means that lead us to it. Upon

Obstacles to Knowledge—Ignorance and Error.

this supposition, the perfection of the understanding consists in the knowledge of truth, this being the end for which it is designed.

There are two things, amongst others, opposite to this perfection, ignorance and error, which are two maladies, as it were, of the mind. Ignorance is no more than a privation of ideas or knowledge; but error is a non-conformity or opposition of our ideas to the nature and state of things. Error being therefore the subversion of truth, is much more opposite to it than ignorance, which is a kind of medium between truth and error.

It is to be observed here, that we do not speak of the understanding, truth, ignorance, and error, purely to know what these things are in themselves; our main design is to consider them as principles of our actions. In this light, ignorance and error, though naturally distinct from one another, are generally mixed, as it were, and confounded; insomuch, that whatever is said of one ought equally to be applied to the other. Ignorance is frequently the cause of error; but whether joined or separate, they follow the same rules, and produce the same effect by the influence they have over our actions or omissions. Perhaps, were we to examine into things exactly, error only, properly speaking, can be looked upon as a principle of action, and not simple ignorance, which, being nothing more of itself than a privation of ideas, cannot be productive of any thing.

XII. There are several sorts of ignorance and error, whose different divisions it is proper for us to observe. 1. Error, considered in respect to its object, is either of the law or of the fact. 2. With regard to its origin, ignorance is voluntary or involuntary, error is vincible or invincible. 3. In relation to the influence of the error on a particular affair or action, it is esteemed essential or accidental.

Error is of the law or fact according as people are mistaken either in respect to the disposition of the law, or in regard to a fact that is not sufficiently known. For instance, it would be an error of the law, were a nation to suppose itself entitled to declare war against a neighboring state, only because it insensibly increases in strength and power. Such was likewise the error so

Different sorts of Errors—Law and Fact—Voluntary and Essential.

common formerly among the Greeks and Romans, that it was allowable for parents to expose their children. On the contrary, the idea Abimilech had of Sarah, the wife of Abraham, by taking her for an unmarried person, was an error of the fact.

The ignorance a person lies under through his own fault, or an error contracted by neglect, and which might have been avoided by using all possible care and attention, is a voluntary ignorance, or a vincible and surmountable error. Thus the polytheism of the Pagans was a vincible error; for they had only to make a right use of their reason, in order to be convinced, that there was no necessity for supposing a plurality of gods. The same may be said of an opinion, established among most of the ancients, that piracy was lawful against those with whom there was no treaty subsisting, and that it was allowable to consider them as enemies. Ignorance is involuntary, and error invincible, when they are such as could neither have been prevented nor removed, even by all the care and endeavors that are morally possible; that is, judging of them according to the constitution of human things, and of common life. Thus the ignorance of the Christian religion, under which the people of America labored, before they had any communication with the Europeans, was an involuntary and invincible ignorance.

In fine, we understand by an essential error, that, whose object is some necessary circumstance in the affair, and which for this very reason has a direct influence on the action, done in consequence thereof; insomuch, that, were it not for this error, the action would never have been done. Hence this is denominated likewise an efficacious error. By necessary circumstances, we are to understand those which are necessarily required, either by the very nature of the thing, or by the intention of the agent, formed at the proper time, and made known by suitable indications. It was thus, for instance, an essential error in the Trojans, at the taking of their town, to shoot their darts against their own people, mistaking them for enemies, because of their being armed after the Greek manner. Again, a person marries another man's wife, supposing her to be a maid, or not knowing that her husband is

 The Will—Happiness and Good, in what they consist.

still living; this regards the very nature of the thing, and is of course, an essential error.

On the contrary, an accidental error is that which has no necessary connection of itself with the affair, and consequently cannot be considered as the real cause of the action. A person abuses or insults another, taking him for somebody else, or does something on the faith of a rumor which has no foundation in fact, &c. These are errors purely accidental, which subsist indeed in the mind of the agent, and have accompanied him in the action, but cannot be considered as its real cause.

It is likewise observable, that these different qualities of ignorance or error may concur, and may be found united in the same case. It is thus an error of the fact may be either essential or accidental; and both the one and the other may be either voluntary or involuntary, vincible or invincible. So much may suffice for what regards the understanding. Let us now proceed to examine into the other faculties of the soul, which concur also to the production of human actions.

 CHAPTER II.

Continuation of the Principles relative to the Nature of Man—Of Will and Liberty.

I. It was not sufficient, pursuant to the views of the Creator, that the human mind should be possessed of the faculty of knowing things, and of forming thereof ideas; it was likewise requisite it should be endowed with an active principle to set it in motion, and with a power whereby man, after knowing the objects that occur to him, should be capable of determining to act, or not to act, according as he judges proper. This faculty is what we call the will.

The will is therefore nothing else but that power of the soul

by which it is determined of itself, and by virtue of an active principle inherent in its nature, to seek for what is agreeable to it, to act after a certain manner, and to do or omit an action with a view of happiness.

By *happiness* we are to understand the internal satisfaction of the mind, arising from the possession of good; and by good, whatever is suitable or agreeable to man for his preservation, perfection, conveniency, or pleasure. The idea of good determines that of evil, which, in its most general signification, implies whatever is opposite to the preservation, perfection, conveniency, or pleasure of man.

II. Instincts, inclinations, and passions are reducible to the will. Instincts are sentiments, excited in the soul by the wants of the body, which determine it to provide immediately against them. Such are hunger, thirst, aversion for whatever is hurtful, &c. Inclinations are propensities of the will, which leads it rather toward some sorts of objects than others, but in an even, tranquil manner; a manner so proportioned to all its operations, that, instead of obstructing or interrupting, it generally facilitates them. As for the passions, they are indeed in the same manner, as the inclinations, motions of the will towards certain objects, but motions of a more impetuous and turbulent kind; motions, that dispossess the soul of its natural tranquility, and hinder it from directing properly its operations. Then it is that the passions become most dangerous distempers. The cause of the passions is generally the allurements of some sensible good, which solicits the soul, and impels it with too violent an impression.

It is easy to conceive, by what has been here said, that the inclinations, passions, and instincts have a very great affinity with one another. They are all alike propensities or motions, which have frequently the same objects; but there is this difference between these species of emotions, that instincts are necessarily the same in all men, by a natural consequence of their constitution, and of the union between the body and the soul; whereas the inclinations and passions, particularly considered, have nothing

Liberty, in what it consists.

necessary in their nature, and are surprisingly different in different men.

Let us make an observation here, which falls in very naturally ; it is, that we often give the name of *heart* to the will, considered as susceptible of the forementioned emotions ; and the reason of this in all probability is, because these emotions were supposed to have their seat in the heart.

III. Such is the nature of the soul, that the will not only acts always spontaneously, that is, of its own proper motion, of its own accord, and by an internal principle ; but likewise, that its determinations are generally accompanied with liberty.

We give the name of liberty to that force or power of the soul whereby it modifies and regulates its operations as it pleases, so as to be able to suspend, continue, or alter its deliberations and actions ; in a word, so as to be able to determine and act with choice, according as it thinks proper. It is by this excellent faculty that man has a kind of command over himself and his actions ; and as he is hereby rendered also capable of conforming to rule, and answerable for his conduct, it is therefore necessary to give a further explication of the nature of this faculty.

Will and liberty being faculties of the soul, they cannot be blind or destitute of knowledge ; but necessarily suppose the operation of the understanding. How is it possible in fact to determine, suspend, or alter our resolutions, unless we know what is proper for to choose ? It is contrary to the nature of an intelligent and rational being to act without intellection and reason. This reason may be either superficial or bad ; yet it has some appearance at least, some glimmering, that makes us give it a momentary approbation. Wherever there is election or choice, there must be a comparison ; and a comparison implies at least a confused reflection, a kind of deliberation, though of a quick and almost imperceptible nature, on the subject before us.

The end of our deliberations is to procure us some advantage. For the will tends generally towards good, that is, to whatsoever is really or apparently proper for rendering us happy ; insomuch, that all actions depending on man, and that are any way relative

 Use of liberty in our judgment respecting truth.

to his end, are for this very reason subject to the will. And as truth, or the knowledge of things, is agreeable to man, and in this signification truth is also a good, it follows that truth forms one of the principal objects of the will.

Liberty, like the will, has goodness and truth for its object; but it has less extent with regard to actions; for it does not exercise itself in all the acts of the will, but only in those which the soul has a power of suspending or altering, as she pleases.

IV. But if any one should inquire, which are those acts wherein liberty displays itself? we answer, that they are easily known by attending to what passes within us, and to the manner in which the mind conducts itself in the several cases that daily occur; as, in the first place, in our judgments concerning true and false; secondly, in our determinations in relation to good and evil; and finally, in indifferent matters. These particulars are necessary, in order to be acquainted with the nature, use, and extent of liberty.

With regard to truth, we are formed in such a manner that, so soon as evidence strikes the mind, we are no longer at liberty to suspend our judgment. Vain would be the attempt to resist this sparkling light; it absolutely forces our assent. Who, for example, could pretend to deny that the whole is greater than a part, or that harmony and peace are preferable, either in a family or state, to discord, tumults, and war?

The same cannot be affirmed in regard to things that have less perspicuity and evidence; for in these the use of liberty displays itself in its full extent. It is true, our mind inclines naturally to that side which seems most probable; but this does not debar it from suspending its assent, in order to seek for new proofs, or to refer the whole inquiry to another opportunity. The obscurer things are, the more we are at liberty to hesitate, to suspend, or defer our determination. This is a point sufficiently evinced by experience. Every day, and at every step as it were, disputes arise, in which the arguments on both sides leave us, by reason of our limited capacity, in a kind of doubt and equilibrium, which permits us to suspend our judgment, to examine the thing anew,

Liberty of judgment—Objection.

and to incline the balance at length to one side rather than to the other. We find, for example, that the mind can hesitate a long time, and forbear determining itself, even after a mature inquiry, in respect to the following questions: Whether an oath, extorted by violence, is obligatory? Whether the murder of Cæsar was lawful? Whether the Roman senate could with justice refuse to confirm the promise made by the Consuls to the Samnites, in order to extricate themselves from the *Caudine Forks*;* or whether they ought to have ratified and given it the force of a public treaty? &c.

V. Though there is no exercise of liberty in our judgment, when things present themselves to us in a clear and distinct manner, still we must not imagine that the entire use of this faculty ceases in respect to things that are evident. For, in the first place, it is always in our power to apply our minds to the consideration of those things, or else divert them thence, by transferring somewhere else our attention. The first determination of the will, by which it is led to consider or not to consider the objects that occur to us, merits particular notice, because of the natural influence it must have on the determination, by which we conclude to act or not to act, in consequence of our reflection and judgment. Secondly, we have it likewise in our power to create, as it were, evidence in some cases, by dint of attention and inquiry; whereas, at first setting out, we had only some glimmerings, insufficient to give us an adequate knowledge of the state of things. In fine, when we have attained this evidence, we are still at liberty to dwell more or less on the consideration thereof; which is also of great consequence, because on this depends its greater or less degree of impression.

These remarks lead us to an important reflection, which may serve for answer to an objection raised against liberty. "It is not in our power (say they) to perceive things otherwise than as they offer themselves to our mind. Now our judgments are

* A narrow pass, in which a Roman army was surrounded by the Samnites. In order to extricate themselves, the Consuls made a treaty which the senate rejected.

formed on this perception of things; and it is by these judgments that the will is determined; the whole is therefore necessary and independent of liberty."

But this difficulty carries little more with it than an empty appearance. Let people say what they will, we are always at liberty to open or to shut our eyes to the light; to exert or relax our attention. Experience shows, that when we view an object in different lights, and determine to search into the bottom of matters, we descry several things that escaped us at first sight. This is sufficient to prove that there is an exercise of liberty in the operations of the understanding, as well as in the several actions thereon depending.

VI. The second question we have to examine, is whether we are equally free in our determinations in regard to good and evil.

To decide this point, we need not stir out of ourselves; for here also, by facts and even by our internal experience, the question may be determined. Certain it is, that in respect to good and evil, considered in general, and as such, we cannot, properly speaking, exercise our liberty, by reason that we feel ourselves drawn towards the one by an invincible propensity, and estranged from the other by a natural and insuperable aversion. Thus it has been ordered by the Author of our being, whilst man has no power in this respect to change his nature. We are formed in such a manner that good of necessity allures us; whereas evil, by an opposite effect, repels us, as it were, and deters us from attempting to pursue it.

But this strong tendency to good and natural aversion to evil, in general, does not debar us from being perfectly free in respect to good and evil, particularly considered; and though we cannot help being sensible of the first impressions which the objects make on us, yet this does not invincibly determine us to pursue or shun those objects. Let the most beautiful and most fragrant fruit, replenished with exquisite and delicious juice, be unexpectedly set before a person oppressed with thirst and heat; he will find himself instantly inclined to seize on the blessing offered to

With regard to things indifferent.

him, and to ease his inquietude by a salutary refreshment. But he can also stop and suspend his action, in order to examine whether the good he proposes to himself by eating this fruit will not be attended with evil; in short, he is at liberty to weigh and deliberate, in order to embrace the safest side of the question. Besides, we are not only able, with the assistance of reason, to deprive ourselves of a thing, whose flattering idea invites us; but moreover, we are able to expose ourselves to a chagrin or pain, which we dread, and would willingly avoid, were we not induced by superior consideration to support it. Can any one desire a stronger proof of liberty?

VII. True it is, notwithstanding that the exercise of this faculty never displays itself more than in different things. I find, for instance, that it depends entirely on myself to stretch out or draw back my hand, to sit down or to walk, to direct my steps to the right or left, &c. On these occasions, where the soul is left entirely to itself, either for want of external motives, or by reason of the opposition, and as it were, equilibrium of motives, if it determine on one side, this may be said to be the pure effect of its pleasure and good will, and of the command it has over its own action.

VIII. Let us stop here awhile to inquire, how comes it that the exercise of this power is limited to particular goods and non-evident truths, without extending itself to good in general, or to such truths as are perfectly clear? Should we happen to discover the reason thereof, it will furnish us with a new reason to admire the wisdom of the Creator in the constitution of man, and with the means at the same time of being better acquainted with the end and true use of liberty.

And first, we hope there is nobody but will admit that the end of God in creating man was to render him happy. Upon this supposition it will be soon agreed, that man cannot attain to happiness any other way than by the knowledge of truth and by the possession of real good. This is evidently the result of the notions above given of good and happiness. Let us therefore direct our reflections towards this prospect. When things, that

are the object of our researches, present themselves to our minds with a feeble light, and are not accompanied with that splendor and clearness which enables us to know them perfectly and to judge of them with full certainty, it is proper and even necessary for us to be invested with a power of suspending our judgment, to the end that, being necessarily determined to acquiesce in the first impression, we should be still at liberty to carry on our inquiry, till we arrive to a higher degree of certainty, and, if possible, as far as evidence itself. Were not this the case, we should be exposed every moment to error, without any possibility of being undeceived. It was therefore extremely useful and necessary to man, that under such circumstances he should have the use and exercise of his liberty.

But when we happen to have a clear and distinct view of things and their relations, that is, when evidence strikes us, it would be of no manner of signification to have the use of liberty, in order to suspend our judgment. For certainty being then in its very highest degree, what benefit should we reap by a new examen or inquiry, were it in our power? We have no longer occasion to consult a guide, when we see distinctly the end we are tending to, and the road we are to take. It is therefore an advantage to man to be unable to refuse his assent to evidence.

IX. Let us reason pretty near in the same manner on the use of liberty with respect to good and evil. Man, designed for happiness, should certainly have been formed in such a manner as to find himself under an absolute necessity of desiring and pursuing good, and of shunning, on the contrary, evil in general. Were the nature of these faculties such as to leave him in a state of indifference, so as to be at liberty in this respect to suspend or alter his desires, plain it is, that this would be esteemed a very great imperfection in him; an imperfection that would imply a want of wisdom in the Author of his being, as a thing directly opposite to the end he proposed in giving him life.

No less an inconveniency would it be, on the other hand, were the necessity, which man is under, of pursuing good and avoiding evil, to be such as would insuperably determine him to act or

Proof of Liberty from Consciousness.

not to act, in consequence of the impressions made on him by each object. Such is the state of human things, that we are frequently deceived by appearances; it is very rare that good or evil presents itself to us pure and without mixture; but there is almost always a favorable and an adverse side, an inconveniency mixed with utility. In order to act, therefore, with safety, and not to be mistaken in our account, it is generally incumbent on us to suspend our first motions, to examine more closely into things, to make distinctions, calculations, and compensations; all which require the use of liberty. Liberty is, therefore, as it were, a subsidiary faculty, which supplies the deficiencies of the other powers, and whose office ceaseth as soon as it has redressed them.

Hence let us conclude, that man is provided with all the necessary means for attaining to the end for which he is designed; and that in this, as in every other respect, the Creator has acted with wonderful wisdom.

X. After what has been said concerning the nature, operations, and use of liberty, it may seem perhaps unnecessary to attempt here to prove that man is indeed a free agent, and that we are as really invested with this as with any other faculty.

Nevertheless, as it is an essential principle, and one of the fundamental supports of our edifice, it is proper to make the reader sensible of the indubitable proof with which we are furnished by daily experience. Let us, therefore, consult only ourselves. Every one finds that he is master, for instance, to walk or sit, to speak or hold his tongue. Do we not also experience continually, that it depends entirely on ourselves to suspend our judgment in order to proceed to a new inquiry? Can any one seriously deny, that, in the choice of good and evil, our resolutions are unconstrained? That, notwithstanding the first impression, we have it in our power to stop of a sudden, to weigh the arguments on both sides, and to do, in short, whatever can be expected from the freest agent? Were I invincibly drawn towards one particular good rather than another, I should feel then the same impression as that which inclines me to do good in general;

that is, an impression that would necessarily drag me along; an impression which there would be no possibility of resisting. Now, experience makes me feel no such violence with respect to any particular good. I find I can abstain from it, I can defer using it, I can prefer something else to it, I can hesitate in my choice; in short, I am my own master to choose, or, which is the same thing, I am *free*.

Should we be asked, how comes it, that, not being free in respect to good in general, yet we are at liberty with regard to particular goods? My answer is, that the natural desire of happiness does not insuperably draw us towards any particular good, because no particular good includes that happiness for which we have a necessary inclination.

Sensible proofs, like these, are superior to all objection, and productive of the most inward conviction, by reason it is impossible that, when the soul is modified after a certain manner, it should not feel this modification, and the state which consequently attends it. What other certainty have we of our existence? And how is it we know that we think, we act; but by our inward sense?

This sense of liberty is so much the less equivocal, as it is not momentary or transient. It is a sense that never leaves us, and of which we have a daily and a continual experience.

Thus we see there is nothing better established in life, than the strong persuasion which all mankind have of liberty. Let us consider the system of humanity, either in general or particular, and we shall find that the whole is built upon this principle. Reflections, deliberations, researches, actions, judgments, all suppose the use of liberty. Hence the ideas of good and evil, of vice and virtue. Hence, as a natural consequence, arises praise or blame, the censure or approbation of our own or other people's conduct. The same may be said of the affections and natural sentiments of men towards one another, as friendship, benevolence, gratitude, hatred, anger, complaints, and reproaches. None of these sentiments could take place, unless we were to admit of liberty. In fine, as this prerogative is in some measure

Reason of the Dispute about Liberty.

the key of the human system, he who does not allow it to man subverts all order, and introduces general confusion.

XI. It is natural here to inquire, how it was ever possible for any body seriously to doubt whether man is master of his actions, whether he is free? I should be less surprised at this doubt, were it concerning a strange or remote fact; a fact that was not transacted within ourselves. But the question is in regard to a thing of which we have an internal, immediate feeling, a constant and daily experience. Strange, that any one should call in question a faculty of the soul! May not we as well doubt of the understanding and will as of the liberty of man? For, if we are content to abide by our inward sense, there is no more room to dispute of one than of the other. But some too subtle philosophers, by considering this subject in a metaphysical light, have stripped it, as it were, of its nature; and finding themselves at a loss to solve a few difficulties, they have given greater attention to these difficulties than to the positive proofs of the thing which insensibly led them to imagine that the notion of liberty was all an illusion. I own it is necessary, in the research of truth, to consider an object on every side, and to balance equally the arguments for and against; nevertheless, we must take care we do not give to those objections more than their real weight. We are informed by experience, that in several things, which, in respect to us, are invested with the highest degree of certainty, there are many difficulties, notwithstanding, which we are incapable of resolving to our satisfaction; and this is a natural consequence of the limits of the mind. Let us conclude, therefore, that when a truth is sufficiently evinced by solid reasons, whatever can be objected against it ought not to stagger or weaken our conviction, so long as they are such difficulties only as embarrass or puzzle the mind, without invalidating the proofs themselves. This rule is so very useful in the study of the sciences, that one should keep it always in sight.* Let us resume now the thread of our reflections.

* There is a wide difference between seeing that a thing is absurd, and not knowing all that regards it, between an unanswerable question in

XII. The denomination of voluntary or human actions in general, is given to all those that depend on the will, and that of free to such as come within the jurisdiction of liberty, which the soul can suspend or turn as it pleases. The opposite of voluntary is involuntary, and the contrary of free is necessary, or whatever is done by force or constraint. All human actions are voluntary, inasmuch as there are none but what proceed from ourselves, and of which we are the authors. But if violence, used by an external force, which we are unable to resist, hinders us from acting, or makes us act without the consent of our will, as when a person stronger than ourselves lays hold of our arm to strike or wound another person, the actions thence resulting, being involuntary, is not, properly speaking, our deed or action, but that of the agent from whom we suffer this violence.

The same cannot be said of actions that are forced and constrained, only as we are determined to commit them, through fear of a great and imminent evil with which we are menaced; as, for instance, were an unjust and cruel prince to oblige a judge to condemn an innocent person, by menacing to put him to death, if he did not obey his orders. Actions of this sort, though forced in some sense, because we commit them with reluctancy, and would never consent to them were it not for a very pressing necessity; such actions, I say, are ranked, nevertheless, among the number of voluntary actions, because, after all, they are produced by a deliberation of the will, which chooses between two inevitable evils, and determines to prefer the least to the greatest. This will become more intelligible by a few examples.

A person gives alms to a poor man who exposes his wants and misery to him; this action is at the same time both voluntary and free. But suppose a man, who travels alone and unarmed, falls into the hands of robbers, and that these miscreants menace him

relation to a truth and an unanswerable objection against it, though a great many confound these two sorts of difficulties. Those only of the latter order are able to prove, that what was taken for a known truth cannot be true, because otherwise some absurdity must ensue. But the others prove nothing but the ignorance we are under in relation to several things that regard a known truth.

Necessary and Free.

with instant death, unless he gives them all he has ; the surrender which this traveler makes of his money, in order to save his life, is indeed a voluntary action, but constrained at the same time, and void of liberty. For which reason, there are some that distinguish these actions by the name of mixed, as partaking of the voluntary and involuntary. They are voluntary, because the principle that produces them is in the agent itself, and the will determines to commit them, as the least of two evils. But they partake of the involuntary, because the will executes them contrary to its inclination, which it would never do, could it find any other expedient to clear itself of the dilemma.

Another necessary elucidation is, that we are to suppose that the evil with which we are menaced is considerable enough to make a reasonable impression on a prudent or wise man, so far as to intimidate him ; and, besides, that the person who compels us has no right to restrain our liberty ; insomuch that we do not lie under an obligation of bearing with any hardship or inconvenience, rather than displease him. Under these circumstances, reason would have us determine to suffer the less evil, supposing, at least, that they are both inevitable. This kind of constraint lays under what is called a moral necessity ; whereas when we are absolutely compelled to act without being able, in any shape whatsoever, to avoid it, this is termed a physical necessity.

It is therefore a necessary point of philosophical exactness, to distinguish between voluntary and free. In fact, it is easy to comprehend, by what has been now said, that all free actions are indeed voluntary, but all voluntary actions are not free. Nevertheless, the common and vulgar way of speaking frequently confounds those two terms, of which we ought to take particular notice in order to avoid all ambiguity.

We give likewise the name of manners sometimes to free actions, inasmuch as the mind considers them as susceptible of rule. Hence we call morality the art which teaches the rules of conduct, and the method of conforming our actions to those rules.

XIII. We shall finish what relates to the faculties of the soul

by some remarks which will help us to understand better their nature and use.

1. Our faculties assist one another in their operation; and, when they are all united in the same subject, they act always jointly. We have already observed that the will supposes the understanding, and that the light of reason serves for a guide to liberty. Thus the understanding, the will, and liberty; the senses, the imagination, and memory; the instincts, inclinations, and passions, are like so many different springs, which concur all to produce a particular effect; and it is by this united concurrence we attain at length to the knowledge of truth, and the possession of solid good, on which our perfection and happiness depends.

XIV. 2. But in order to procure to ourselves those advantages, it is not only necessary that our faculties be well constituted in themselves, but, moreover, we ought to make a good use of them, and maintain the natural subordination there is between them and the different motions, which lead us towards or divert us from certain objects. It is not therefore sufficient to know the common and natural state of our faculties; we should likewise be acquainted with their state of perfection, and know in what their real use consists. Now truth being, as we have seen, the proper object of the understanding, the perfection of this faculty is to have a distinct knowledge of truth; at least of those important truths which concern our duty and happiness. For such a purpose, this faculty should be formed to close attention, a just discernment, and solid reasoning. The understanding thus perfected, and considered as having actually the principles which enable us to know and to distinguish the true and useful, is what is properly called reason; and hence it is that we are apt to speak of reason as of a light of the mind, and as of a rule, by which we ought always to be directed in our judgments and actions.

If we consider in like manner the will in its state of perfection, we shall find it consists in the force and habit of determining always right, that is, not to desire any thing but what reason dictates, and not to make use of our liberty but in order to choose

Diversity in conduct of Men—Power of Reason.

the best. This sage direction of the will is properly called virtue, and sometimes goes by the name of reason. And, as the perfection of the soul depends on the mutual succors which the faculties, considered in their most perfect state, lend to one another, we understand likewise sometimes by reason, taken in a more vague and more extensive sense, the soul itself, considered with all its faculties, and as making actually a good use of them. Thus the term *reason* carries with it always an idea of perfection, which is sometimes applied to the soul in general, and at other times to some of the faculties in particular.

XV. 3. The faculties, of which we were treating, are common to all mankind; but they are not found always in the same degree, neither are they determined after the same manner. Besides, they have their periods in every man; that is, their increase, perfection, enfeebling, and decay, in the same manner almost as the organs of the body. They vary likewise exceedingly in different men. One has a brighter understanding, another a quicker sensation; this man has a strong imagination, while another is swayed by violent passions. And all this is combined and diversified in an infinite number of ways, according to the difference of temperaments, education, examples, and occasions, that furnish opportunities for exercising certain faculties, or inclinations, rather than others; for it is the exercise that strengthens them more or less. Such is the source of that prodigious variety of geniuses, tastes, and habits, which constitutes what we call the characters and manners of men; a variety which, considered in general, very far from being unserviceable, is of great use in the views of Providence.

XVI. But, whatever strength may be attributed to the inclinations, passions, and habits, still it is necessary to observe, that they have never enough to impel man invincibly to act contrary to reason. Reason has it always in her power to preserve her superiority and rights. She is able, with care and application, to correct vicious dispositions, to prevent and even to extirpate bad habits, to bridle the most unruly passions by sage precautions, to weaken them by degrees, and finally to destroy them entirely, or

to reduce them within their proper bounds. This is sufficiently proved by the inward feeling that every man has of the liberty with which he determines to follow this sort of impressions; proved by the secret reproaches we make to ourselves when we have been too much swayed by them; proved, in fine, by an infinite variety of examples. True it is, that there is some difficulty in surmounting these obstacles; but this is richly compensated by the glory attending so noble a victory, and by the solid advantages thence arising.

CHAPTER III.

That Man, thus constituted, is a Creature capable of moral direction, and accountable for his Actions.

I. AFTER having seen the nature of man, considered in respect to right, the result is, that he is a creature really susceptible of choice and direction in his conduct. For, since he is capable, by means of his faculties, of knowing the nature and state of things, and of judging from this knowledge; since he is invested with the power of determining between two or several offers made to him; in fine, since, with the assistance of liberty, he is able in certain cases to suspend, or continue his actions, as he judges proper, it evidently follows that he is master of his own actions, and that he exercises a kind of authority and command over them, by virtue of which, he can direct and turn them which way he pleases. Hence it appears how necessary it was for us to set out, as we have done, with inquiring previously into the nature and faculties of man. For how could we have discovered the rules by which he is to square his conduct, unless we antecedently know in what manner he acts, and what are the springs, as it were, that put him in motion?

II. Another remark, which is a consequence of the foregoing,

Imputability—Imputation.

is, that, since man is the immediate author of his actions, he is accountable for them; and in justice and reason they can be imputed to him. This is a point of which we think it necessary to give here a short explication.

The term *imputing* is borrowed of arithmetic, and signifies properly to set a sum down to somebody's account. To impute an action, therefore, to a person, is to attribute it to him, as to its real author; to set it down, as it were, to his account, and make him answerable for it. Now it is evidently an essential quality of human actions, as produced and directed by the understanding and will, to be susceptible of imputation; that is, it is plain that man can be justly considered as the author and productive cause of those actions, and that for this very reason it is right to make him accountable for them, and lay to his charge the effects that arise from them, as natural consequences. In fact, the true reason why a person cannot complain of being made answerable for an action, is, that he has produced it himself knowingly and willingly. Every thing almost that is said and done in human society, supposes this principle generally received, and every body acquiesces in it from an inward conviction.

III. We must therefore lay down, as an incontestible and fundamental principle of the imputability of human actions, that every voluntary action is susceptible of imputation; or to express the same thing in other terms, that every action or omission, subject to the direction of man, can be charged to the account of the person in whose power it was to do it or let it alone; and on the contrary, every action whose existence or non-existence does not depend on our will, cannot be imputed to us. Observe here, that omissions are ranked by civilians and moralists among the number of actions; because they apprehend them as the effect of a voluntary suspension of the exercise of our faculties.

Such is the foundation of imputability, and the true reason why an action or omission is of an imputable nature. But we must take particular notice, that, though an action is imputable, it does not ensue from that only that it merits actually to be imputed. Imputability and imputation are two things, which we should

carefully distinguish. The latter supposes, besides the imputability, some moral necessity of acting or not, after a certain manner; or, which amounts to the same, some obligation that requires a thing to be done or omitted, that can be really done or omitted.

Puffendorf* does not seem to have sufficiently distinguished between these two ideas. It is enough for our present purpose to point out the distinction, deferring to treat of actual imputation, and to establish principles thereof, till we have explained the nature of obligation, and shown that man is actually obliged to conform his actions to rule.

What has been hitherto advanced, properly regards the nature of the human mind, or the internal faculties of man, as they render him capable of moral direction. But in order to complete our knowledge of human nature, we should view it likewise in its extrinsic condition, in its wants and dependencies, and in the various relations wherein it is placed; in fine, in what we may call the different states of man. For it is our situation in life that decides the use we ought to make of our faculties.

CHAPTER IV.

Further Inquiry into what relates to Human Nature, by considering the different states of Man.

I. THE different states of man are nothing more than the situation wherein he finds himself in regard to the beings that surround him, with relations thence resulting.

We shall be satisfied with taking here a cursory view of some of the principal states, and to render them distinguishable by their essential characteristics, without entering into an exact inquiry,

* See the Law of Nature and Nations, book i. chap. v. § 5, and the Duties of Man and a Citizen, book i. § 17.

 Primitive and Original—To God and Society.

which should naturally take place when treating in particular of each state.

All these different states may be ranged under two general classes; some are primitive and original; others adventitious.

II. Primitive and original states are those in which man finds himself placed by the very hand of God, independent of any human action.

Such is, in the first place, the state of man with regard to God; which is a state of absolute dependance. For let us make but never so small use of our faculties, and enter into the study of ourselves, it will evidently appear that it is from this first Being we hold our life, reason, and all other concomitant advantages; and that in this and every other respect we experience daily, in the most sensible manner, the effects of the power and goodness of the Creator.

III. Another primitive and original state is that wherein men find themselves in respect to one another. They are all inhabitants of the same globe, placed in a kind of vicinity to each other, have all one common nature, the same faculties, same inclinations, wants, and desires. They cannot do without one another; and it is only by mutual assistance they are capable of attaining to a state of ease and tranquility. Hence we observe a natural inclination in mankind, that draws them towards each other, and establishes a commerce of services and benevolence between them, whence results the common good of the whole, and the particular advantage of individuals. The natural state, therefore, of men among themselves, is a state of union and society; society being nothing more than the union of several persons for their common advantage. Besides, it is evident that this must be a primitive state, because it is not the work of man, but established by divine institution. Natural society is a state of equality and liberty; a state in which all men enjoy the same prerogatives, and an entire independence on any other power but God. For every man is naturally master of himself, and equal with his fellow creatures, so long as he does not subject himself to another person's authority by a particular convention.

IV. The opposite state to that of society is solitude; that is, the condition in which we imagine man would find himself, were he to live absolutely alone, abandoned to his own thoughts, and destitute of all commerce with those of his own species. Let us suppose a man arrived at the age of maturity, without having had the advantage of education or any correspondence with the rest of mankind, and consequently without any other knowledge than that which he has of himself acquired; such a man would be undoubtedly the most miserable of all animals. We should discover nothing in him but weakness, savageness, and ignorance; scarce would he be able to satisfy the wants of his body, exposed, poor wretch, to perish with hunger or cold, or by the ravenous teeth of wild beasts. What a vast difference between such a state and that of society, which, by the mutual succors that men receive from one another, procures them all the knowledge, convenience, and ease that form the security, pleasure, and happiness of life! True it is, that all these advantages suppose that men, far from prejudicing one another, live in harmony and concord, and entertain this union by mutual good offices. This is what we call a state of *peace*, whereas those who endeavor to do harm, and those also who find themselves obliged to guard against it, are in a state of war, a state of violence, diametrically opposite to that of society.

V. Let us observe, in the next place, that man finds himself naturally attached to the earth, from whose bosom he draws whatever is necessary for the preservation and conveniences of life. This situation produces another primitive state of man, which is likewise deserving of our attention.

Such in effect is the natural constitution of the human body, that it cannot subsist entirely of itself, and by the sole force of its temperament. Man, at all ages, stands in need of several external succors for his nourishment, as well as for repairing his strength, and keeping his faculties in proper order. For this reason, our Creator has sown plentifully around us such things as are necessary for our wants, and has implanted in us at the same time the instincts and qualifications proper for applying these things

Family—Marriage—Weakness and Dependence of Man.

to our advantage. The natural state, therefore, of man, considered in this light, and in respect to the goods of the earth, is a state of indigence and incessant wants, against which he would be incapable of providing in a suitable manner, were he not to exercise by his industry constant labor. Such are the principal of those states that are called primitive and original.

VI. But man, being naturally a free agent, is capable of making great modifications in his primitive state, and of giving, by a variety of establishments a new face to human life. Hence those adventitious states are formed, which are properly the work of man, wherein he finds himself placed by his own act, and in consequence of establishments, whereof he himself is the author. Let us take a cursory view of the principal of these states.

The first that presents itself to us, is the state of families. This is the most natural and ancient of all societies, and the very foundation of that which is called national; for a people or nation is only an assemblage or composition of several families

Families begin by marriage; and it is nature itself that invites men to this union. Hence children arise, who, by perpetuating the several families, prevent the extinction of human societies, and repair the breaches made every day by death.

The family state is productive of various relations; as those of husband, wife, father, mother, children, brothers, sisters, and all the other degrees of kindred, which are the first tie of human society.

VII. Man, considered in his birth, is weakness and impotency itself, in regard as well to the body as to the soul. It is even remarkable, that the state of weakness and infancy lasts longer in man than in any other animal. He is beset and pressed on all sides by a thousand wants; and destitute of knowledge, as well as strength, finds himself in an absolute incapacity of relieving them; he is therefore under a particular necessity of recurring to external assistance. Providence for this reason has inspired parents with that instinct, or natural tenderness, which prompts them so eagerly to delight in the most troublesome cares for the preservation and good of those whom they have brought into the world. It is

likewise in consequence of this state of weakness and ignorance in which children are born, that they are naturally subject to their parents, whom nature has invested with all the authority and power necessary for governing those whose advantage they are to study and procure.

VIII. The property of goods is another very important establishment, which produces a new adventitious state. It modifies the right which all men had originally to earthly goods; and, distinguishing carefully what belongs to individuals, insures the quiet and peaceable enjoyment of what they possess; by which means it contributes to the maintenance of peace and harmony among mankind. But, since all men had originally a right to a common use of whatever the earth produces for their several wants, it is evident that, if this natural power is actually restrained and limited in divers respects, this must necessarily arise from some human act; and consequently the state of property, which is the cause of those limitations, ought to be ranked among the adventitious states.

IX. But, among all the states established by the act of man, there is none more considerable than the civil state, or that of civil society and government. The essential character of this society, which distinguishes it from the forementioned society of *nature*, is the subordination to a supreme authority, exclusive of equality and independence. Mankind were originally divided into families only, and not into nations. Those families lived under the paternal government of the person who was their chief, as their father or grandfather. But, when they came afterwards to increase and unite for their common defense, they composed a national body, governed by the will of him or of those on whom they had conferred the authority. This is the origin of what we call civil government, and of the distinction of magistrates and people.

X. The civil state and property of goods produced several other establishments, which form the beauty and ornament of society, and from which many adventitious states arise; such as the different posts or offices of those who have any share in the government; as magistrates, judges, state officers, ministers of relig-

 Natural State of Man—Original and Adventitious States.

ion, physicians, &c. To which may be added the polite arts, trades, agriculture, navigation, commerce, with their several dependencies, whereby human life is so agreeably and advantageously diversified.

XI. Such are the principal states produced by human consent. And yet, as these different modifications of the primitive state of man are the effect of his natural liberty, the new relations and different states thence arising may be very well considered as so many natural states; provided, however, that the use which men make of their liberty, in this respect, has nothing in it un-conformable to their natural constitution, that is, to reason and the state of society.

It is therefore proper to observe, in relation to this subject, that when we speak of the natural state of man, we are to understand not only that natural and primitive state in which he is placed, as it were, by the hands of nature herself, but, moreover, all those into which man enters by his own act and agreement, and that are conformable in the main to his nature, and contain nothing but what is agreeable to his constitution and the end for which he was formed. For since man himself, as a free and intelligent being, is able to see and know his situation, as also to discover his ultimate end, and in consequence thereof to take the right measures to attain it, it is properly in this light we should consider his natural state, to form thereof a just idea. That is, the natural state of man is, generally speaking, that which is conformable to his nature, constitution, and reason, as well as the good use of his faculties, considered in their full maturity and perfection. We shall be particularly attentive to this remark, the importance of which will appear more sensibly by the application and use that may be made thereof on several occasions.

XII. Let us not forget to observe likewise, that there is this difference between the primitive and adventitious states, that the former being annexed, as it were, to the nature and constitution of man, such as he has received them from God, are for this very reason common to all mankind. The same cannot be said of the adventitious states; which, supposing a human act or agreement,

cannot of themselves be indifferently suitable to all men, but to those only who contrived and procured them.

Let us add, in fine, that several of those states may be found combined and united in the same person, provided they have nothing incompatible in their nature. Thus the same person may be father of a family, judge, minister of state, &c., all at the same time.

Such are the ideas we are to form of the nature and different state of man; and it is of all these parts united and compacted together, that the entire system of humanity is formed. These are like so many wheels of the same machine, which, combined and managed by a dexterous hand, conspire all to the same end; and, on the contrary, unskillfully directed, embarrass and destroy each other. But how man, in fine, is enabled to conduct himself in this prudent manner, and what rule he is to observe in order to attain this happy end, is what we have still to inquire, and forms the subject of the following chapters.

CHAPTER V.

That Man ought to square his Conduct by Rule—The method of finding out this Rule—and the Foundations of Right in general.

I. LET us begin with an explication of terms. A rule, in its proper signification, is an instrument, by means of which we draw the shortest line from one point to another, which for this very reason is called a straight line.

In a figurative and moral sense, a rule imports nothing else but a principle, or maxim, which furnishes man with a sure and concise method of attaining to the end he proposes.

II. The first thing we are to inquire in regard to this subject is, whether it is really agreeable to the nature of man to submit his actions to a fixed and invariable rule? Or whether, on the

A Rule of Action agreeable to Man's Nature.

contrary, he is allowed to abandon himself indifferently to all the motions of his will, and thus to enjoy, without either limit or impediment, the extreme facility with which this faculty turns itself on all sides, in consequence of its natural flexibility?

The reflections we have given in the preceding chapters are, of themselves, and independent of any other argument, a sufficient and convincing proof that the nature and constitution of man requires the establishment of some rule. Every thing in nature has its destination and end; and, consequently, each creature is conducted to its end by a proper principle of direction. Man, who holds a considerable rank among the beings that surround him, participates undoubtedly in this fixed and universal order. And, whether we consider him, in himself, as an intelligent and rational being, or view him as a member of society, or whether, in fine, we regard him as the handiwork of God, and deriving from this first Being his faculties, state, and existence, all these circumstances evidently indicate an end, a destination, and consequently imply the necessity of a rule. Had man been created to live at random without any fixed and determinate view, without knowing whither he is to direct his course, or what road he ought to take, it is evident that his noblest faculties would be of no manner of use to him. Wherefore, waiving all disquisitions concerning the necessity of a rule, let us endeavor rather to discover what this rule is, which alone, by enlightening the understanding, and directing our actions to an end worthy of him, is capable of forming the order and beauty of human life.

III. When we speak of a rule in relation to human actions, two things are manifestly supposed; the first, that human conduct is susceptible of direction, as we have already proved; the second, that man in all his steps and actions proposes to himself a scope or end he desires to attain.

IV. Now let man reflect but never so little on himself, he will soon perceive that every thing he does is with a view of happiness, and that this is the ultimate end he proposes in all his actions, or the last term to which he reduces them. This is a first truth, of which we have a continual conviction from our internal

sense. Such, in effect, is the nature of man, that he necessarily loves himself; that he seeks in every thing and every where his own advantage, and can never be diverted from this pursuit. We naturally desire, and necessarily wish for good. This desire anticipates all our reflections, and is not in our own election; it predominates in us, and becomes the *primum mobile* of all our determinations; our hearts being never inclined towards any particular good, but by the natural impression which determines us to good in general. It is not in our power to change this bent of the will, which the Creator himself has implanted in us.

V. This system of providence extends to all beings endowed with sense and knowledge. Even brute animals have a like instinct; for they all love themselves, endeavoring at self-preservation by all sorts of means, eagerly pursuing whatever seems good or useful to them, and turning, on the contrary, from whatever appears prejudicial or bad. The same propensity shows itself in man, not only as an instinct, but, moreover, as a rational inclination, approved and strengthened by reflection. Hence, whatsoever presents itself to us, as an object proper to promote our happiness, must of necessity please us; and every thing that appears opposite to our felicity, becomes of course the object of our aversion. The more we study man, the more we are convinced that here in reality lies the source of all our tastes; here the grand spring, which sets us in motion.

VI. And indeed, if it be natural to every intelligent and rational being to act always with a fixed view and determinate end, it is no less evident that this view or end must be ultimately reduced to himself, and consequently to his own advantage and happiness. The desire, therefore, of happiness, is as essential to a man, and as inseparable from his nature, as reason itself; for reason, as the very etymology of the word implies, is nothing more than a calculation and account. To reason is to calculate, and to draw up an account, after balancing every thing, in order to see on which side the advantage lies. It would, therefore, imply a contradiction to suppose a rational being that could absolutely forego its interest, or be indifferent with regard to its own felicity.

Self-Love—Reason.

VII. We must, therefore, take care not to consider self-love, and that sense or inclination which fixes us so strongly to our happiness, as a principle naturally vicious, and a fruit of human depravation. This would be accusing the Author of our existence, and converting his noblest gifts into poison. Whatever comes from a Being supremely perfect is in itself good; and were we to condemn the sense or inclination of self-love as bad in itself, under a pretense that, by a misconstruction and wrong use thereof, it is the source of an infinite number of disorders, we should for the very same motives be obliged to condemn reason; because it is from the abuse of this faculty that the grossest errors and most extravagant irregularities of men proceed.

It may appear surprising to some, that we should have stopped here to investigate and explain the truth of a principle which one would imagine is obvious to every body, to the learned as well as the vulgar. And yet it was absolutely necessary; because this is a truth of the very last importance, which gives us the key, as it were, of the human system. It is true, that all ethical writers agree that man is made for happiness, and naturally desires it; (for how is it possible not to hear the voice of nature, which rises from the very bottom of the heart?) But a great many, after acknowledging this principle, seem to lose sight of it, and, not attending to the consequences that flow from it, erect their systems on different, and sometimes quite opposite foundations.

VIII. But if it be true that man does nothing but with a view of happiness, it is no less certain that reason is the only way he has to attain it.

In order to establish this second proposition or truth, we have only to attend to the very idea of happiness, and to the notion we have of good and evil. Happiness is that internal satisfaction of the soul which arises from the possession of good; good is whatever is agreeable to man, for his preservation, perfection, entertainment, and pleasure. Evil is the opposite of good.

Man incessantly experiences that there are some things convenient, and others inconvenient to him; that the former are not all equally convenient, but some more than others; in fine, that

this conveniency depends, for the most part, on the use he knows how to make of things, and that the same thing which may suit him, using it after a certain manner and measure, becomes unsuitable when this use exceeds its limits. It is only, therefore, by investigating the nature of things, as also the relations they have between themselves and with us, that we are capable of discovering their fitness or disagreement with our felicity, of discerning good from evil, of ranging every thing in its proper order, of setting a right value on each, and of regulating, consequently, our researches and desires.

But is there any other method of acquiring this discernment, but by forming just ideas of things and their relations, and by deducing from these first ideas the consequences that flow from them by exact and close argumentations? Now it is reason alone that directs all these operations. Yet this is not all; for as, in order to arrive at happiness, it is not sufficient to form just ideas of the nature and state of things, but it is also necessary that the will should be directed by those ideas and judgments in the series of our conduct; so it is certain that nothing but reason can communicate and support in man the necessary strength for making a right use of liberty, and for determining in all cases according to the light of his understanding, in spite of all the impressions and motions that may lead him to a contrary pursuit.

IX. Reason is, therefore, the only mean, in every respect, that man has left to attain to happiness, and the principal end for which he has received it. All the faculties of the soul, its instincts, inclinations, and even the passions, are relative to this end; and, consequently, it is this same reason that is capable of pointing out the true rule of human actions, or, if you will, she herself is this primitive rule. In fact, were it not for this faithful guide, man would lead a random life, ignorant even of what regards himself, unacquainted with his own origin and destination, and with the use he ought to make of whatever surrounds him; stumbling, like a blind man, at every step; lost, in fine, and bewildered in an inextricable labyrinth.

X. Thus we are conducted naturally to the first idea of the

Right—Its general Sense.

word *right*, which, in its most general sense, and that to which all the particular significations bear some relation, is nothing else but whatever reason certainly acknowledges, as a sure and concise mean of attaining happiness, and approves as such.

This definition is the result of the principles hitherto established. In order to be convinced of its exactness, we have only to draw these principles together, and unite them under one prospect. In fact, since *right*, in its primary notion, signifies whatever directs, or is well directed; since direction supposes a scope and an end to which we are desirous of attaining; since the ultimate end of man is happiness; and, in fine, since he cannot attain to happiness but by the help of reason, does it not evidently follow that *right*, in general, is whatever reason approves as a sure and concise mean of acquiring happiness? It is likewise in consequence of these principles, that reason, giving its approbation to itself, when it happens to be properly cultivated, and arrived to that state of perfection in which it knows how to use all its discernment, bears, by way of preference or excellence, the appellation of *right reason*, as being the first and surest mean of direction, whereby man is enabled to acquire felicity.

That we may not forget any thing in the analysis of these first ideas, it is proper to observe here that the Latins express what we call *right* by the word *jus*, which properly signifies an order or precept. These different denominations undoubtedly proceeded from this, that reason seems to command with authority whatever it avows to be a *right* and sure mean of promoting our felicity. And as we have only to seek for what is *right*, in order to know what reason commands us, hence the natural connection of these two ideas arose in respect to the rules of *right reason*. In a word, of two ideas naturally connected, the Latins have followed one, and we the other.

CHAPTER VI.

General Rules of Conduct Prescribed by Reason—Of the Nature and First Foundations of Obligation.

I. It is already a great point gained to have discovered the primitive rule of human actions, and to know this faithful guide, which is to direct the steps of man, and whose directions and counsels he may follow with an entire confidence. But let us not stop here; and, since experience informs us that we are frequently mistaken in our judgments concerning good and evil, and that these erroneous judgments throw us into most dangerous irregularities, let us consult, therefore, our guide, and learn which are the characters of real good and evil, in order to know in what true felicity consists, and what road we are to take in order to attain it.

II. Though the general notion of good and evil be fixed in itself, and invariable, still there are various sorts of particular goods and evils, or of things that pass for such in the minds of men.

1. The first counsel, therefore, that reason gives us, is to examine well into the nature of good and evil, and to observe carefully their several differences, in order to set upon each thing its proper value.

This distinction is easily made. A very slight attention to what we continually experience informs us, that, man being composed of body and soul, there are consequently two sorts of goods and evils, spiritual and corporeal. The first are those that proceed only from our thoughts; the second arise from the impressions of external objects on our senses. Thus the sensible pleasure resulting from the discovery of an important truth, or the self-approbation arising from a consciousness of having discharged our duty, &c., are goods purely spiritual; as the chagrin of a geometrician for being unable to find out a demonstration, or the remorse a person feels for having committed a bad action,

Distinction Between Good and Evil.

&c., are mere spiritual pains. With regard to corporeal goods and evils, they are sufficiently known; on one side, they are health, strength, beauty; on the other, sickness, weakness, pain, &c. These two sorts of goods and evils are interesting to man, and cannot be reckoned indifferent, by reason that, man being composed of body and soul, it is plain his perfection and happiness depend on the good state of these two parts

2. We likewise observe that appearances frequently deceive us, and what at first sight carries with it the face of good proves to be a real evil, whilst an apparent evil oftentimes conceals an extraordinary good. We should, therefore, make a distinction between real goods and evils and those that are false and apparent. Or, which amounts to pretty near the same thing, there is sometimes a pure good and a pure evil, and sometimes there is a mixture of both, which does not obstruct our discerning what part it is that prevails, and whether the good or evil be predominant.

3. A third difference regards their duration. In this respect goods and evils have not all the same nature; some are solid and durable, others transitory and inconstant. Whereto we may add, that there are goods and evils of which we are masters, as it were, and which depend in such a manner on ourselves that we are able to fix the one, in order to have a constant enjoyment of them, and to shun or get rid of the others. But they are not all of this kind; some goods there are that escape our most eager pursuits, whilst some evils overtake us, notwithstanding our most solicitous efforts to avoid them.

4. There are at present goods and evils, which we actually feel; and future goods and evils, which are the objects of our hopes or fears.

5. There are particular goods and evils, which affect only some individuals; and others, that are common and universal, of which all the members of the society partake. The good of the whole is the real good; that of one of the parts, opposite to the good of the whole, is only an apparent good, and consequently a real evil.

6. From all these remarks we may, in fine, conclude, that, goods and evils not being all of the same species, there are consequently some differences amongst them, and that, compared together, we find there are some goods more excellent than others, and evils more or less incommodious. It happens, likewise, that a good, compared with an evil, may be either equal, or greater, or less; whence several differences or gradations arise that are worthy of special notice.

These particulars are sufficient to show the utility of the principal rule we have given, and how essential it is to our happiness to make a just distinction of goods and evils. But this is not the only counsel that reason gives us; we are going to point out some others that are not of less importance.

III. 1. True happiness cannot consist in things that are inconsistent with the nature and state of man. This is another principle which naturally flows from the very notion of good and evil. For whatsoever is inconsistent with the nature of a being, tends for this very reason to degrade or destroy it, to corrupt or alter its constitution; which, being directly opposite to the preservation, perfection, and good of this being, subverts the foundation of its felicity. Wherefore, reason being the noblest part of man, and constituting his principal essence, whatever is inconsistent with reason cannot form his happiness. To which I add, that whatever is incompatible with the state of man cannot contribute to his felicity; and this is a point as clear as evidence can make it. Every being that, by its constitution, has essential relations to other beings, which it cannot shake off, ought not to be considered merely as to itself, but as constituting a part of the whole, to which it is related. And it is sufficiently manifest, that it is on its situation in regard to the beings that surround it, and on the relations of agreement or opposition it has with them, that its good or bad state, its happiness or misery, must in a great measure depend.

IV. 2. In order to procure for ourselves a solid happiness, it is not sufficient to be attentive to the present good and evil; we must likewise examine their natural consequences, to the end

The Greatest Good to be Preferred.

that, comparing the present with the future, and balancing one with the other, we may know beforehand what must be the natural result.

3. It is, therefore, contrary to reason to pursue a good that must certainly be attended with a more considerable evil.

4. But, on the contrary, nothing is more reasonable than to resolve to bear with an evil, from which a greater good must certainly arise.

The truth and importance of these maxims are self-obvious. Good and evil being two opposites, the effect of one destroys that of the other; that is to say, the possession of a good, attended with a greater evil, renders us really unhappy; and, on the contrary, a slight evil, which procures us a more considerable good, does not hinder us from being happy. Wherefore, every thing well considered, the first ought to be avoided as a real evil, and the second should be courted as a real good.

The nature of human things requires us to be attentive to these principles. Were each of our actions restrained in such a manner, and limited within itself, as not to be attended with any consequence, we should not be so often mistaken in our choice, but should be almost sure of grasping the good. But, informed as we are, by experience, that things have frequently very different effects from what they seem to promise, insomuch that the most pleasing objects are attended with bitter consequences, and, on the contrary, a real and solid good is purchased with labor and pains, prudence does not allow us to fix our whole attention on the present. We should extend our views to futurity, and equally weigh and consider the one and the other, in order to pass a solid judgment on them, a judgment sufficient to fix properly our resolutions.

V. 5. For the same reason, we ought to prefer a greater to a less good; we ought always to aspire to the noblest goods, that suit us, and proportion our desires and pursuits to the nature and merit of each good. This rule is so evident, that it would be losing time to pretend to prove it.

VI. 6. It is not necessary to have an entire certainty in re-

gard to considerable goods and evils; mere possibility, and much more so probability, is sufficient to induce a reasonable person to deprive himself of some trifling good, and even to suffer some slight evil, with a design of acquiring a far greater good, and avoiding a more troublesome evil.

This rule is a consequence of the foregoing ones; and we may affirm, that the ordinary conduct of men shows they are sensibly convinced of the prudence and necessity thereof. In effect, what is the aim of all this tumult of business, into which they hurry themselves? To what end and purpose are all the labors they undertake, all the pains and fatigues they endure, all the perils to which they constantly expose themselves? Their intent is to acquire some advantages, which they imagine they do not purchase too dear; though those advantages are neither present, nor so certain as the sacrifices they must make in order to obtain them.

This is a very rational manner of acting. Reason requires that, in default of certainty, we should take up with probability, as the rule of our judgment and determination; for probability in that case is the only light and guide we have. And, unless it is more eligible to wander in uncertainty than to follow a guide, unless we are of opinion that our lamp ought to be extinguished, when we are deprived of the light of the sun, it is reasonable to be directed by probability, when we are incapable of coming at evidence. It is easier to attain our aim by help of a faint or glimmering light than by continuing in darkness.*

VII. 7. We should be solicitous to acquire a taste for true goods, insomuch that goods of an excellent nature, and acknowledged as such, should excite our desires, and induce us to make all the efforts necessary for getting them into our possession.

*Probable evidence, in its very nature, affords but an imperfect kind of information, and is to be considered as related only to beings of limited capacities. For nothing which is the possible object of knowledge, whether past, present, or future, can be probable to an infinite intelligence, since it cannot but be discerned absolutely as it is in itself, certainly true or certainly false. *But to us probability is the very guide of life.*—BUTLER'S ANALOGY.

Rules Suggested by Reason.

This last rule is a natural consequence of the others, ascertaining their execution and effects. It is not sufficient to have enlightened the mind in respect to the nature of these goods and evils, that are capable of rendering us really happy or unhappy; we should likewise give activity and efficacy to these principles, by forming the will, so as to determine itself by taste and habit, pursuant to the counsels of enlightened reason. And let no one think it impossible to change our inclinations or to reform our tastes. It is with the taste of the mind as with that of the palate. Experience shows that we may alter both, so as to find pleasure at length in things that before were disagreeable to us. We begin to do a thing with pain, and by an effort of reason; afterwards, we familiarize ourselves to it by degrees; then, a frequency of acts renders it easier to us, the repugnance ceases, we view the thing in a different light from what we did before; and use at length makes us love a thing, that before was the object of our aversion. Such is the power of habit; it makes us insensibly feel so much ease and satisfaction in what we are accustomed to, that we find it difficult afterwards to abstain from it.

VIII. These are the principal counsels we receive from reason. They are in some measure a system of maxims, which, drawn from the nature of things, and particularly from the nature and state of man, acquaint us with what is essentially suitable to him, and include the most necessary rules for his perfection and happiness.

These general principles are of such a nature as to force, as it were, our assent; insomuch that a clear and cool understanding, disengaged from the prejudice and tumult of passions, cannot help acknowledging their truth and prudence. Every one sees how useful it would be to man to have these principles present always in his mind, that, by the application and use of them in particular cases, they may insensibly become the uniform and constant rule of his inclinations and conduct.

Maxims in fact, like these, are not mere speculations; they should naturally influence our morals, and be of service to us in practical life. For to what purpose would it be to listen to the

advice of reason, unless we intended to follow it? Of what signification are those rules of conduct, which manifestly appear to us good and useful, if we refuse to conform to them? We ourselves are sensible that this light was given us to regulate our steps and motions. If we deviate from these maxims, we inwardly disapprove and condemn ourselves, as we are apt to condemn any other person in a similar case. But if we happen to conform to these maxims, it is a subject of internal satisfaction, and we commend ourselves, as we commend others who have acted after this manner. These sentiments are so very natural, that it is not in our power to think otherwise. We are forced to respect these principles, as a rule agreeable to our nature, and on which our felicity depends.

IX. This agreeableness sufficiently known implies a necessity of squaring our conduct by it. When we mention necessity, it is plain we do not mean a physical, but moral necessity, consisting in the impression, made on us by some particular motives, which determine us to act after a certain manner, and do not permit us to act rationally the opposite way.

Finding ourselves in these circumstances, we say we are under an obligation of doing or omitting a certain thing; that is, we are determined to it by solid reasons, and engaged by cogent motives, which, like so many ties, draw our will to that side. It is in this sense a person says he is obliged. For, whether we are determined by popular opinion, or whether we are directed by civilians and ethic writers, we find that the one and the other make obligation properly consist in a reason, which, being well understood and approved, determine us absolutely to act after a certain manner preferable to another. Hence it follows, that the whole force of this obligation depends on the judgment, by which we approve or condemn a particular manner of acting. For to approve is acknowledging we ought to do a thing; and to condemn is owning we ought not to do it. Now *ought* and *to be obliged* are synonymous terms.

We have already hinted at the natural analogy between the proper and literal sense of the word *obliged*, and the figurative

 Nature and Origin of Obligation.

signification of this same term. Obligation properly denotes a tie; a man *obliged* is therefore a person who is *tied*. And as a man, bound with cords or chains, cannot move or act with liberty, so it is very near the same case with a person who is *obliged*; with this difference, that, in the first case, it is an external and physical impediment which prevents the effect of one's natural strength; but in the second, it is only a moral tie; that is, the subjection of liberty is produced by reason, which, being the primitive rule of man and his faculties, directs and necessarily modifies his operations in a manner suitable to the end it proposed.

We may, therefore, define obligation, considered in general and in its first origin, a restriction of natural liberty, produced by reason; inasmuch as the counsels, which reason gives us, are so many motives that determine man to act after a certain manner, preferable to another.

X. Such is the nature of primitive and original obligation. From this it follows, that this obligation may be more or less strong, more or less rigorous, according as the reasons that establish it have more or less weight, and consequently as the motives, thence resulting, have more or less impression on the will. For manifest it is, that the more these motives are cogent and efficacious, the more the necessity of conforming our actions to them becomes strong and indispensable.

XI. I am not ignorant that this explication of the nature and origin of obligation is far from being adopted by all civilians and ethic writers. Some pretend *that the natural fitness or unfitness which we acknowledge in certain actions, is the true and original foundation of all obligation; that virtue has an intrinsic beauty, which renders it amiable of itself; and that vice, on the contrary, is attended with an intrinsic deformity, which ought to make us detest it; and this antecedent to, and independent of, the good and evil, of the rewards and punishments, which may arise from the practice of either.*

But this opinion methinks can be supported no farther than it is reduced to that which we have just now explained. For to say that virtue has of itself a natural beauty, which renders it

worthy of our love, and that vice, on the contrary, merits our aversion, is not this acknowledging, in fact, that we have *reason* to prefer one to the other? Now, whatever this reason be, it certainly can never become a motive capable of determining the will, but inasmuch as it presents to us some good to acquire, or tends to make us avoid some evil; in short, only as it is able to contribute to our satisfaction, and place us in a state of tranquility and happiness. Thus it is ordained by the very constitution of man, and the nature of human will. For, as good in general is the object of the will, the only motive, capable of setting it in motion, or of determining it to one side as preferable to another, is the hope of obtaining this good. To abstract, therefore, from all interest in respect to man, is depriving him of all motive of acting; that is, reducing him to a state of inaction and indifference. Besides, what idea should we be able to form of the agreeableness or disagreeableness of human actions, of their beauty or turpitude, of their proportion or irregularity, were not all this referred to man himself, and to what his destination, his perfection, his welfare, and, in short, his true felicity require?

XII. Most civilians are of a different opinion from that of Dr. Clark. "They establish, as a principle of obligation, properly so called, the will of a superior being, on whom dependence is acknowledged. They pretend there is nothing but this will, or the orders of a being of this kind, that can bridle our liberty, or prescribe particular rules to our actions. They add, that neither the relations of proportion nor disagreement, which we acknowledge in the things themselves, nor the approbation they receive from reason, lay us under an indispensable necessity of following those ideas as the rules of our conduct. That, our reason being in reality nothing else but ourselves, nobody, properly speaking, can lay himself under an obligation. Hence they conclude, that the maxims of reason, considered in themselves, and independent of the will of a superior, have nothing obligatory in their nature."

This manner of explaining the nature, and laying the foundation, appears to me insufficient, because it does not ascend to the original source and real principles. True it is, that the will of a

Two kinds of Obligation.

superior obliges those who are his dependents; yet this will can not have such an effect, but inasmuch as it meets with the approbation of our reason. For this purpose, it is not only necessary that the superior's will should contain nothing in itself opposite to the nature of man; but, moreover, it ought to be proportioned in such a manner to his constitution and ultimate end, that we cannot help acknowledging it as the rule of our actions; insomuch that there is no neglecting it without falling into a dangerous error; and, on the contrary, the only means of obtaining our end is to be directed by it. Otherwise, it is inconceivable how man can voluntarily submit to the orders of a superior, or determine willingly to obey him. Own indeed I must, that, according to the language of civilians, the idea of a superior, who commands, must intervene to establish an obligation, such as is commonly considered. But, unless we trace things higher, by grounding even the authority of this superior on the approbation he receives from reason, it will produce only an external constraint, very different from obligation, which hath of itself a power of penetrating the will, and moving it by an inward sense; insomuch that man is of his own accord, and without any restraint or violence, inclined to obey.

XIII. From all these remarks, we may conclude that the differences between the principal systems concerning the nature and origin of obligation, are not so great as they appear at first sight. Were we to make a closer inquiry into these opinions, by ascending to their primitive sources, we should find that these different ideas, reduced to their exact value, far from being opposite, agree very well together, and ought even to concur, in order to form a system, connected properly with all its essential parts, in relation to the nature and state of man. It is proper at present to observe, that there are two sorts of obligations, one internal, and the other external. By internal obligation, I understand that which is produced only by our reason, considered as the primitive rule of conduct, and in consequence of the good or evil the action in itself contains. By external obligation, we mean that which arises from the will of a being on whom we allow ourselves de-

pendent, and who commands or prohibits some particular things, under a commination of punishment. Whereto we must add, that these two obligations, far from being opposite to each other, have, on the contrary, a perfect agreement. For as the external obligation is capable of giving a new force to the internal, so the whole force of the external obligation ultimately depends on the internal; and it is from the agreement and concurrence of these two obligations that the highest degree of moral necessity arises, as also the strongest tie, or the properest motive to make impression on man, in order to determine him to pursue steadily, and never to deviate from, some fixed rules of conduct; in a word, by this it is that the most perfect obligation is formed.

CHAPTER VII.

Of Right, considered as a Faculty, and of the obligation thereto corresponding.

I. BESIDES the general idea of right, such as has been now explained, considering it as the primitive rule of human actions, this term is taken in several particular significations, which we must here point out.

But, previous to every thing else, we should not forget the primitive and general notion we have given of right. For, since it is from this notion, as from its principle, that the subject of this and the following chapters is deduced, if our reasonings are exact in themselves, and have a necessary connection with the principle, this will furnish us with a new argument in its favor. But if, unexpectedly, it should turn out otherwise, we shall have at least the advantage of detecting the error in its very source, and of being better able to correct it. Such is the effect of a just method; we are convinced that a general idea is exact, when the particular ideas are reducible to it, as different branches to their trunk.

II. In the first place, right is frequently taken from a per-

 Power and Right.

sonal quality, for a power or faculty of acting. It is thus we say that every man has a right to attend to his own preservation; that a parent has a right to bring up his children; that a government has a right to levy troops for the defense of the state, &c.

In this sense we must define right a power that man hath to make use of his liberty and strength in a particular manner, either in regard to himself, or in respect to other men, so far as this exercise of his strength and liberty is approved by reason.

Thus, when we say that a father has a right to bring up his children, all that is meant thereby is, that reason allows a father to make use of his liberty and natural force in a manner suitable to the preservation of his children, and proper to cultivate their understandings, and to train them up in the principles of virtue. But, on the contrary, we affirm that a father has no right to expose his children, or to put them to death, &c.; because these things, far from being approved, are expressly condemned by reason.

III. We must not, therefore, confound simple power with right. A simple power is a physical quality; it is a power of acting in the full extent of our natural strength and liberty; but the idea of right is more confined. This includes a relation of agreeableness to a rule which modifies the physical power, and directs its operations in a manner proper to conduct man to a certain end. It is for this reason we say that right is a moral quality. It is true there are some who rank power as well as right among the number of moral qualities; but there is nothing in this essentially opposite to our distinction. Those who rank these two ideas among moral entities, understand by power pretty near the same thing as we understand by right; and custom seems to authorize this confusion; for we equally use, for instance, *paternal power*, and *paternal right*, &c. Be this as it will, we are not to dispute about words. The main point is to distinguish between *physical* and *moral*; and it seems that the word *right*, as Puffendorf himself insinuates,* is fitter of itself than power to express

* There seems to be this difference between the terms power and right, that the first does more expressly import the presence of the said quality,

the moral idea. In short, the use of our faculties becomes a right only so far as it is approved by reason, and is found agreeable to this primitive rule of human actions. And whatever a man can *reasonably* perform, becomes, in regard to him, a right, because reason is the only mean that can conduct him in a short and sure manner to the end he proposes. There is nothing, therefore, arbitrary in these ideas; they are borrowed from the very nature of things, and, if we compare them with the foregoing principles, we shall find they flow from them as necessary consequences.

IV. If any one should afterwards inquire on what foundation it is that reason approves a particular exercise of our strength and liberty, in preference to another, the answer is obvious. The difference of those judgments arises from the very nature of things and their effects. Every exercise of our faculties, that tends of itself to the perfection and happiness of man, meets with the approbation of reason, which condemns whatever leads to a contrary end.

V. Obligation answers to right, taken in a manner above explained, and considered in its effects with regard to another person.

What we have already said, in the preceding chapter, concerning obligation, is sufficient to convey a general notion of the nature of this moral quality. But in order to form a just idea of that which comes under our present examination, we are to observe that when reason allows a man to make a particular use of his strength and liberty, or, which is the same thing, when it acknowledges he has a particular right, it is requisite, by a very natural consequence, that in order to insure this right to man, he should acknowledge at the same time that other people ought not to employ their strength and liberty in resisting him in this point; but, on the contrary, that they should respect his right, and assist him in the exercise of it, rather than do him any prejudice. From this the idea of obligation naturally arises; which is nothing more than a restriction of natural liberty produced by reason;

and does but obscurely denote the manner how any one acquired it. Whereas the word right does properly and clearly show that the quality was fairly got, and is now fairly possessed.

Right and Obligation Correlative Terms.

inasmuch as reason does not permit an opposition to be made to those who use their right; but, on the contrary, it obliges every body to favor and abet such as do nothing but what it authorizes, rather than oppose or traverse them in the execution of their lawful designs.

VI. Right, therefore, and obligation are, as logicians express it, *correlative* terms; one of these ideas necessarily supposes the other; and we cannot conceive a right without a corresponding obligation. How, for example, could we attribute to a father the right of forming his children to wisdom and virtue by a perfect education, without acknowledging, at the same time, that children ought to submit to paternal direction, and that they are not only obliged not to make any resistance in this respect, but moreover to concur, by their docility and obedience, to the execution of their parents' views? Were it otherwise, reason would be no longer the rule of human actions; it would contradict itself, and all the rights it grants to man would become useless and of no effect; which is taking from him with one hand what it gives him with the other.

VII. Such is the nature of right, taken for a faculty, and of the obligation thereto corresponding. It may be generally affirmed that man is susceptible of these two qualities as soon as he begins to enjoy life and sense. Yet we must make some difference here between right and obligation, in respect to the time in which these qualities begin to unfold themselves in man. The obligations a person contracts as man, do not actually display their virtue till he is arrived to the age of reason and discretion. For, in order to discharge an obligation, we must be first acquainted with it; we must know what we do, and be able to square our actions by a certain rule. But as for those rights that are capable of procuring the advantage of a person without his knowing any thing of the matter, they date their origin and are in full force from the very first moment of his existence, and lay the rest of mankind under an obligation of respecting them. For example, the right which requires that nobody should injure or offend us, belongs as well to children, and even to infants that

are still in their mothers' wombs, as to adult persons. This is the foundation of that equitable rule of the Roman law, which declares *that infants, who are as yet in their mothers' wombs, are considered as already brought into the world, whenever the question relates to any thing that may turn to their advantage.* But we cannot with any exactness affirm that an infant, whether already come or coming into the world, is actually subject to any obligation with respect to other men. This state does not properly commence, with respect to man, till he has attained the age of knowledge and discretion.

VIII. Various are the distinctions of rights and obligations; but it will be sufficient for us to point out those only that are most worthy of notice.

In the first place, rights are natural or acquired. The former are such as appertain originally and essentially to man, such as are inherent in his nature, and which he enjoys as man, independent of any particular act on his side. Acquired rights, on the contrary, are those which he does not naturally enjoy, but are owing to his own procurement. Thus the right of providing for our preservation is a right natural to man; but sovereignty, or the right of commanding a society of men, is a right acquired.

Secondly, rights are perfect or imperfect. Perfect rights are those which may be asserted in rigor, even by employing force to obtain the execution, or to secure the exercise thereof in opposition to all those who should attempt to resist or disturb us. Thus reason would empower us to use force against any one who would make an unjust attack on our lives, our goods, or our liberty. But when reason does not allow us to use forcible methods, in order to secure the enjoyment of the rights it grants us, then these rights are called imperfect. Thus, notwithstanding reason authorizes those who of themselves are destitute of means of living to apply for succor to other men, yet they cannot, in case of refusal, insist upon it by force, or procure it by open violence. It is obvious, without our having any occasion to mention it here, that obligation answers exactly to right, and is

Natural and Acquired—Perfect and Imperfect.

more or less strong, perfect, or imperfect, according as right itself is perfect or imperfect.

Thirdly, another distinction worthy of our attention, is, that there are rights which may be lawfully renounced and others that cannot. A creditor, for example, may forgive a sum due to him, if he pleases, either in the whole or part; but a father cannot renounce the right he has over his children, nor leave them in an entire independence. The reason of this difference is, that there are rights which of themselves have a natural connection with our duties, and are given to man only as means to perform them. To renounce this sort of right would be, therefore, renouncing our duty, which is never allowed. But, with respect to rights that no way concern our duties, the renunciation of them is licit, and only a matter of prudence. Let us illustrate this with another example. Man cannot absolutely, and without any manner of reserve, renounce his liberty; for this would be manifestly throwing himself into a necessity of doing wrong, were he so commanded by the person to whom he has made this subjection. But it is lawful for us to renounce a part of our liberty, if we find ourselves better enabled thereby to discharge our duties, and to acquire some certain and reasonable advantage. It is with these modifications we must understand the common maxim, *that it is allowable for every one to renounce his right.*

Fourthly, right, in fine, considered in respect to its different objects, may be reduced to four principal species. 1. The right we have over our own persons and actions, which is called *liberty*. 2. The right we have over things or goods that belong to us, which is called *property*. 3. The right we have over the persons and actions of other men, which is distinguished by the name of *empire* or *authority*. 4. And in fine, the right one may have over other men's things, of which there are several sorts. It suffices, at present, to have given a general notion of these different species of right. Their nature and effects will be explained when we come to a particular inquiry into these matters.

Such are the ideas we ought to have of right, considered as a

faculty. But there is likewise another particular signification of this word, by which it is taken for *law*; as when we say that natural right is the foundation of morality and politics; that it forbids us to break our word; that it commands the reparation of damage, &c. In all these cases right is taken for *law*. And as this kind of right agrees in a particular manner with man, it is therefore a matter of importance to clear and explain it well, which we shall endeavor to perform in the following chapters.

CHAPTER VIII.

Of Law in General.

I. IN the researches hitherto made concerning the rule of human actions, we have consulted only the nature of man, his essence, and what belongs to his eternal part. This inquiry has shown us that man finds within himself, and in his own *reason*, the rule he ought to follow; and since the counsels, which reason gives him, point out the shortest and safest road to his perfection and happiness, from thence arises a principle of obligation, or a cogent motive to square his actions by his primitive rule. But, in order to have an exact knowledge of the human system, we must not stop at these first considerations; we should likewise, pursuant to the method already pointed out in this work,* transfer our attention to the different states of man, and to the relations thence arising, which must absolutely produce some particular modifications in the rules he is to follow. For, as we have already observed, these rules ought not only to be conformable to the nature of man, but they should be proportionable, moreover, to his state and situation.

II. Now, among the primitive states of man, dependence is

*See Chap. iii. sec. 3.

Primitive State of Man—Dependence.

one of those which merits the most attention, and ought to have the greatest influence on the rule he is to observe. In fact, a being independent of every body else has no other rule to pursue but the counsels of his own reason; and in consequence of this independence, he is freed from all subjection to another's will; in short, he is absolute master of himself and his actions. But the case is not the same with a being who is supposed to be dependent on another, as on his superior and master. The sense of this dependence ought naturally to engage the inferior to take the will of him on whom he depends for the rule of his conduct; since the subjection in which he finds himself does not permit him to entertain the least reasonable hopes of acquiring any solid happiness, independent of the will of his superior and of the views he may propose in relation to him.* Besides, this has more or less extent and effect, in proportion as the superiority of the one, and the dependence of the other, is greater or less, absolute or limited. It is obvious that all these remarks are in a particular manner applicable to man; so that, as soon as he acknowledges a superior, to whose power and authority he is naturally subject, in consequence of this state, he must acknowledge likewise the will of this superior to be the rule of his actions. This is the *right* we call *law*.

It is to be understood, however, that this will of the superior has nothing in it contrary to reason, the primitive rule of man. For, were this the case, it would be impossible for us to obey him. In order to render a law the rule of human actions, it should be absolutely agreeable to the nature and constitution of man, and be ultimately designed for his happiness, which reason makes him necessarily pursue. These remarks, though clear enough of themselves, will receive a greater light when we have more particularly explained the nature of law.

III. Law I define a rule, prescribed by the supreme power in a society, either in order to lay an obligation upon its members of doing or omitting certain things, under the commination of punishment, or to leave them at liberty to act or not in other

*See chap. vi. sec. 3.

 Definition of Law.

things, just as they think proper, and to secure to them, in this respect, the full enjoyment of their rights.

IV. I say that *law is a rule* to signify, in the first place, what law has in common with counsel; and, secondly, to distinguish law from transient orders, given by the supreme power; which, not being permanent rules of conduct, are not properly laws.

I add, that *law is a rule prescribed*, because a simple resolution, confined within the breast of the legislator, without manifesting itself by some external sign, can never be law. It is essential that it be made public, so that the people may be made acquainted with its requirement and with the necessity of squaring their conduct by it.

V. Let us finish the explication of the principal ideas that enter into the definition of law. Law is prescribed by the *supreme power*. This is what distinguishes it from *counsel*, which comes from a friend or an equal; who, as such, has no power over us, and whose advices, consequently, neither have the same force nor can produce the same obligation as law, which is supported by the highest authority. Counsels are followed by reason, drawn from the nature of things; laws are obeyed, not only on account of the reason on which they are established, but likewise because of the power which prescribes them. The obligation arising from counsel is merely internal; that of law is both internal and external. Counsel acts only upon the willing; law upon the unwilling also.

Society, as we have already observed, is the union of several persons for a particular end, from which some common advantage arises. The end is the effect, or advantage, which intelligent beings propose to themselves, and are willing to procure. The union of several persons is the concurrence of their will to procure the end they aim at in common. But, though we make the idea of society enter into the definition of law, it must not thence be inferred that society is essential and necessary to the enacting of laws. Considering the thing exactly, we may very well form a conception of law, when the supreme power has only a single

Sovereignty and Right of Commanding.

person subject to its authority ; and it is only in order to enter into the actual state of things, that we suppose a supreme power commanding a society of men. The relation existing between the supreme power and the citizen forms a society between them, but of a particular kind, which we may call a *society of inequality*, in which the supreme power commands and the citizen obeys.

The right to command is, therefore, a necessary attribute of the supreme power. The right to command is nothing more than the power of directing the actions of others with authority. And, as the power of exercising one's force and liberty is no farther a right than as it is approved and authorized by reason, it is on this approbation of reason, as the last resort, that the right to command is established.

VI. This leads us to inquire more particularly into the natural foundation of empire or sovereignty ; or, which amounts to the same thing, what is it that confers or constitutes a right of laying an obligation on another person, and of requiring his submission and obedience ? This is a very important question in itself ; important also in its effects. For, the more we are convinced of the reasons which establish on the one hand authority, and dependence on the other, the more we are inclined to make a real and voluntary submission to those on whom we depend. Besides, the diversity of sentiments in relation to the manner of laying the foundation of sovereignty, is a sufficient proof that this subject requires to be treated with care and attention.

CHAPTER IX.

Of the Foundation of Sovereignty, or the Right of Commanding.

I. INQUIRING here into the foundation of the right of command, we consider the thing only in a general and metaphysical manner. The question is to know the foundation of a necessary sovereignty and dependence; that is, such as is founded on the very nature of things, and is a natural consequence of the constitution of those beings to whom it is attributed. Let us, therefore, waive whatever relates to a particular species of sovereignty, in order to ascend to the general ideas from which the first principles are derived. But, as general principles, when just and well founded, are easily applied to particular cases, it follows, therefore, that the first foundation of sovereignty, or the reasons on which it is established, ought to be laid in such a manner as to be easily applicable to the several species that fall within our knowledge. By this mean, as we observed before, we can be fully satisfied with regard to the justness of the principles, or distinguish whether they are defective.

II. Another general and preliminary remark is, that there can be neither sovereignty nor natural and necessary dependence between beings, which, by their nature, faculties, and state, have so perfect an equality, that nothing can be attributed to one which is not alike applicable to the other. In fact, in such a supposition, there could be no reason why one should arrogate an authority over the rest, and subject them to a state of dependence, of which the latter could not equally avail themselves against the former. But as this reduces the thing to an absurdity, it follows that such an equality between several beings excludes all subordination, all empire and necessary dependence of one on the other; just as the equality of two weights keeps the scale in a perfect equilibrium. There must be, therefore, in the very nature of those beings who are supposed to be subordinate one to the other, an

Origin and Foundation of Sovereignty.

essential difference of qualities, on which the relation of superior and inferior may be founded. But the sentiments of writers are divided in the determination of those qualities.

III. 1. Some pretend that the sole superiority of strength, or, as they express it, an irresistible power, is the true and first foundation of the right of imposing an obligation and prescribing laws. "This superiority of power gives, according to them, a right of reigning, by the impossibility in which it places others of resisting him who has so great an advantage over them."

2. Others there are who derive the origin and foundation of sovereignty from the eminency or superior excellence of nature; "which not only renders a being independent of all those who are of an inferior nature, but, moreover, causes the latter to be regarded as made for the former. And of this, say they, we have a proof in the very constitution of man, where the soul governs, as being the noblest part; and it is likewise on this foundation that the empire of man over brutes is grounded."

3. A third opinion, which deserves also our notice, is that of Barbeyrac. According to this judicious author, "there is, properly speaking, only one general foundation of obligation, to which all others may be reduced, and that is our natural dependence on God, inasmuch as he has given us being, and has consequently a right to require we should apply our faculties to the use for which he has manifestly designed them. An artist, he continues, as such, is master of his own work, and can dispose of it as he pleases. Were a sculptor capable of making animated statues, this alone would entitle him to insist that the marble, shaped by his own hands, and endowed by him with understanding, should be subject to his will. But God is the author of the matter and form of the parts of which our being is composed, and he has given them all the faculties with which they are invested. To these faculties, therefore, he has a right to prescribe what limits he pleases, and to require that men use them in such or such a manner," &c.

IV. Such are the principal systems on the origin and foundation of sovereignty and dependence. Let us examine them thoroughly, and, in order to pass a right judgment, let us take

care not to forget the distinction of physical and moral necessity, nor the primitive notions of right and obligation, such as have been above explained.

1. This being premised, I affirm that those who found the right of prescribing laws on the sole superiority of strength, or on an irresistible power, establish an insufficient principle, and which, rigorously considered, is absolutely false. In fact, it does not follow, that because I am incapable of resisting a person, he has therefore a right to command me, that is, that I am bound to submit to him by virtue of a principle of obligation, and to acknowledge his will as the universal rule of my conduct. Right being nothing else but that which reason approves, it is this approbation only, which reason gives to him who commands, that is capable of founding his right, and, by necessary consequence, produces that inward sense which we distinguish by the name of obligation, and inclines us to a spontaneous submission. Every obligation, therefore, supposes some particular reasons that influence the conscience and bend the will, insomuch that, pursuant to the light of our own reason, we should think it criminal to resist, were it even in our power, and should conclude that we have therefore no right to do it. Now a person who alleges no other reason but a superiority of force, does not propose a motive sufficient to oblige the will. For instance, the power which may chance to reside in a malignant being, neither invests him with any right to command, nor imposes any obligation on us to obey; because this is evidently repugnant to the very idea of right and obligation. On the contrary, the first counsel which reason gives us in regard to a malignant power, is to resist, and, if possible, to destroy him. Now, if we have a right to resist, this right is consistent with the obligation of obeying, which is evidently thereby excluded. True it is, that, if we clearly see that all our efforts will be useless, and that our resistance must only subject us to a greater evil, we should choose to submit, though with reluctancé, for a while, rather than expose ourselves to the attacks and violence of a malignant power. But in this case we should be constrained, though not under an obligation. We endure, in spite of

Superiority of Nature.

ns, the effects of a superior force, and, whilst we make an external submission, we inwardly feel our nature rise and protest against it. This leaves us always a full right to attempt all sorts of ways to shake off the unjust and oppressive yoke. There is, therefore, properly speaking, no obligation in that case. Now the default of obligation implies the default of right.* We have omitted making mention here of the dangerous consequences of this system; it is sufficient at present to have refuted it by principles; and perhaps we shall have occasion to take notice of these consequences another time.

V. The other two opinions have something in them that is plausible and even true, yet they do not seem to me entirely sufficient. The principles they establish are too vague, and have need to be reduced to a more determinate point.

2. And indeed I do not see that the sole excellency of nature is sufficient to found a right of sovereignty. I will acknowledge, if you please, this excellency, and agree to it as a truth that I am well convinced of. This is the whole effect that must naturally arise from this hypothesis. But here I make a halt; and the knowledge I have of the excellency of a superior being does not alone afford me a motive sufficient to subject myself to him, and to induce me to abandon my own will, in order to take his for my rule. So long as I am confined to these general heads, and am informed of nothing more, I do not feel myself inclined by an internal motion to submit; and without any reproach of conscience, I may sincerely judge that the intelligent principle within me is sufficient to direct my conduct. So far, we confine ourselves to mere speculations. But, if you should attempt to require any thing more of me, the question would then be reduced to this point: how and in what manner does this being, whom you suppose to surpass me in excellence, intend to conduct himself with regard to me? and by what effects will this superiority or excellence be displayed? Is he willing to do me good, or harm? or is he, in respect to me, in a state of indifference? To these interrogations there must be absolutely some answer given; and ac-

* See chap. viii. sec. 6.

ording to the side that is chosen, I shall agree, perhaps, that this being has a right to command me, and that I am under an obligation of obeying. But these reflections are, if I am not mistaken, a demonstrative proof that it is not sufficient to allege merely and simply the excellency of a superior being, in order to establish the foundation of sovereignty.

VI. Perhaps there is something more exact in the third hypothesis. "God, say they, is the Creator of man; it is from him he has received and holds his life, his reason, and all his faculties; he is therefore master of his work, and can of course prescribe what rules he pleases. Hence our dependence, hence the absolute empire of God over us naturally arises; and this is the very foundation of all authority."

The sum of what is here alleged to found the empire of God over man is reduced to his supreme power. But does it follow from this only, and by an immediate and necessary consequence, that he has a right to prescribe laws to us? That is the question. The sovereign power of God enables him to dispose of man as he has a mind, to require of him whatever he pleases, and to lay him under an absolute necessity of complying, for the creature cannot resist the Creator; and by its nature and state it finds itself in so absolute a dependence, that the Creator may, if he please, even annihilate and destroy it. This, we own, is certain; and yet it does not seem sufficient to establish the right of the Creator. There is something more than this requisite to form a moral quality of a simple power, and to convert it into right.* In a word, it is necessary, as we have more than once observed, that the power be such as will be approved by reason, to the end that man may submit to it willingly, and by that inward sense which produces obligation.

Here I beg leave to make a supposition that will set the thing in a much clearer light. Had the Creator given existence to the creature only to render it unhappy, the relation of Creator and creature would still subsist, and yet we could not possibly conceive, in this supposition, either right or obligation. The irre-

* See chap. vii. sec. 3.

sistible power of the Creator might indeed constrain the creature; but this constraint would never form a reasonable obligation, a moral tie; because an obligation of this nature always supposes the concurrence of the will, and an approbation or an acquiescence on the part of man, from which voluntary submission arises. Now this acquiescence could never be given to a being that would exert his supreme power only to oppress his creature and render it unhappy.

The quality, therefore, of Creator is not alone and of itself sufficient to establish the right of command, and the obligation of obeying.

VII. But if to the idea of the Creator we join (which Barbeyrac probably supposed, though he has not distinctly expressed it) the idea of being perfectly wise and sovereignly good, who has no desire of exercising his power but for the good and advantage of his creatures, then we have everything necessary to found a legitimate authority.

Let us only consult ourselves, and suppose that we not only derive our existence, life, and all our faculties from a being infinitely superior to us in power, but, moreover, that we are perfectly convinced that this being, no less wise than powerful, had no other aim in creating us than to render us happy, and that with this view he is willing to subject us to laws, certain it is that, under these circumstances, we could not avoid approving of such a power, and the exercise thereof in respect to us. Now this approbation is acknowledging the right of the superior; and consequently the first counsel that reason gives us, is to resign ourselves to the direction of such a master, to subject ourselves to him, and to conform all our actions to what we know in relation to his will. And why so? Because it is evident to us, from the very nature of things, that this is the surest and shortest way to arrive at happiness, the end to which all mankind aspire. And from the manner we are formed, this knowledge will be necessarily attended with the concurrence of our will, with our acquiescence and submission; insomuch that if we should act contrary to those principles, and any misfortune should afterwards befall us, we

could not avoid condemning ourselves, and acknowledging that we have justly drawn upon ourselves the evil we suffer. Now this is what constitutes the true character of obligation, properly so called.

VIII. If we have, therefore, a mind to embrace and take in the whole, in order to form a complete definition, we must say that the right of sovereignty arises from superiority of power, accompanied with wisdom and goodness.

I say, in the first place, *a superiority of power*, because an equality of power, as we have observed in the very beginning, excludes all empire, all natural and necessary subordination; and besides, sovereignty and command would become useless and of no manner of effect, were they not supported by a sufficient power. What would it avail a person to be a ruler, unless he were possessed of effectual methods to enforce the law and his orders made in pursuance of it?

But this is not yet sufficient; wherefore I say, in the second place, that this power ought to be *wise and benevolent*; *wise* to know and to choose the most proper means to make us happy; and *benevolent*, to be generally inclinable to use those means, and tend to promote our felicity.

In order to be convinced of this, it will be sufficient to remark three cases, which are the only ones that can be here supposed. Either he is, with respect to us, an indifferent power, that is, a power willing to do us neither good nor harm, as in no ways interesting himself in what concerns us; or he is a malignant power, or, in fine, he is a propitious and benevolent power.

In the first case, our question cannot take place. How superior soever a being is in regard to me, so long as he does not concern himself about me, but leaves me entirely to myself, I remain in as complete a liberty, in respect to him, as if he were not known to me, or as if he did not at all exist.* Wherefore, there is no authority on his side, nor obligation on mine.

* And, therefore, though that notion of the Epicureans was most senseless and impious, in which they described the gods as enjoying their own happinesses with the highest peace and tranquility, far removed from the

Qualities which form the Right of Sovereignty.

But if we suppose a malignant power, reason, far from approving, revolts against him, as against an enemy, so much the more dangerous as he is invested with great power. Man cannot acknowledge such a power has a right; on the contrary, he finds himself authorized to leave no measure untried to get rid of so formidable a master, in order to be sheltered from the evils with which he might otherwise be unjustly afflicted.

But let us suppose a being equally wise and beneficent. Man, instead of being able to refuse him his approbation, will feel himself inwardly and naturally inclined to submit, and acquiesce entirely in the will of such a being, who is possessed of all the qualities necessary to conduct him to his ultimate end. By his *power*, he is perfectly able to procure the good of those who are subject to him, and to remove whatever may possibly injure them. By his *wisdom*, he is thoroughly acquainted with the nature and constitution of those on whom he imposes laws; and knows their faculties and strength, and in what their real interests consist. He cannot, therefore, be mistaken either in the designs he proposes for their benefit, or in the means he employs in order to attain them. In fine, *goodness* inclines such a legislator to be really willing to render the people happy, and constantly to direct to this end the operations of his wisdom and power. Thus the assemblage of these qualities, by uniting, in the very highest degree, all that is capable of deserving the approbation of reason, comprises whatsoever can determine man and lay him under an internal as well as an external obligation of submission and obedience. Here, therefore, lies the foundation of the right of sovereignty.

IX. In order to bind and subject free and rational creatures, there is no necessity, properly speaking, for more than an empire or authority, whose wisdom and lenity would forcibly engage the approbation of reason, independent of the motives excited by the apprehension of power. But, as it easily happens, from the man-

troublesome care of human business, and neither smiling at the good nor frowning at the wicked deeds of men; yet they rightly enough inferred, that upon this supposition, all religion, and all fear of divine powers, was vain and useless.—*Puffendorf, Law of Nature and Nations, book i. chap. vi. § 11. See Cicero de Nat. Deor, lib. i. chap. 2.*

ner that men are formed, that either through levity and neglect, or passion and malice, they are not so much struck as they ought with the wisdom of the legislator, and with the excellency of his laws, it was, therefore, proper there should be an efficacious motive, such as the apprehension of punishment, in order to have a stronger influence over the will. For which reason it is necessary that the law-maker should be armed with power and force, to be better able to maintain his authority. Let us not separate, therefore, these different qualities, which form, by their concurrence, the right of the ruler, as power alone, unaccompanied with benevolence, cannot constitute any right; so benevolence, destitute of power and wisdom, is likewise insufficient for this effect. For, from this only, that a person wishes another well, it does not follow that he is his master; neither are a few particular acts of benevolence sufficient for that purpose. A benefit requires no more than gratitude and acknowledgment; for, in order to testify our gratitude, it is not necessary we should subject ourselves to the power of our benefactor. But let us join these ideas, and suppose at one and the same time a supreme power on which every one actually and really depends, a supreme wisdom that directs his power, and a supreme goodness by which it is animated. What can we desire more to establish, on the one side, the most eminent authority, and on the other, the greatest subordination? We are compelled then, as it were, by our own reason, which will not so much as suffer us to deny that such a superior is invested with a true right to command, and that we are under a real obligation to obey.*

X. And as it is power, wisdom, and benevolence that consti-

* It may indeed be said, that the foundation of external obligation is the will of a superior; (see above, chap. vi. sec. xii.) provided, this general proposition be afterwards explained by the particulars into which we have entered. But when some add that force has nothing to do with the foundation of this obligation, and that it only serves to enable the superior to exert his right, this notion does not appear to me to be exact; and methinks that this abstract manner of considering the thing subverts the very foundation of the obligation here in question. There can be no external obligation without a superior, nor a superior without force, or, which is the same thing, without power; force, therefore, or power, is a necessary part of the foundation of obligation.

Obligation of Law.

tute sovereignty, so dependence, on the contrary, arises from want and weakness.

It is, therefore, right in Puffendorf to remark that what renders man susceptible of an obligation, produced by an external principle, is that he naturally depends on a superior; and that, moreover, as a free and intelligent being, he is capable of knowing the rules given him, and of choosing to conform his actions to them. But these are rather conditions necessarily supposed and of themselves understood, than the exact and immediate causes of subjection. More important it is to observe, that as the power of obliging a rational creature is founded on the ability and will of making him happy if he obeys, unhappy if he disobeys; this supposes that this creature is capable of good and evil, sensible of pleasure and pain, and besides, that his state of happiness or misery may be either increased or diminished. Otherwise, he might be forced, indeed, by a superior power, to act after a certain manner, but he could not be properly obliged.

XI. Such is the true foundation of sovereignty and dependence; a foundation that might be still better established by applying these general principles to the particular species of known sovereignty or empire, such as that of God over man, that of a government over its people, and the power of fathers over their children. We should be convinced thereby, that all these species of authority are originally founded on the principles above established, which would serve for a new proof of the truth of those principles.* But it is sufficient to have hinted here in general at this remark, the particulars we reserve for another place.

An authority, established on such a foundation, and which comprises whatever can be imagined most efficacious and capable of binding man, and of inclining him to be steadily directed by certain rules of conduct, undoubtedly forms the most complete and strongest obligation. For there is no obligation more perfect than that which is produced by the strongest motives to determine the will, and the most able, by their preponderance, to prevail over all other contrary reasons.† Now, every thing concurs here to this

* See section 1. † See chap. vi. sec. 10.

effect: the nature of the rules prescribed by the legislator, which of themselves are the most fit to promote our perfection and felicity; the power and authority with which he is invested, whereby he is enabled to decide our happiness or misery; and, in fine, the entire confidence we have in him, because of his power, wisdom and goodness. What can we imagine more to captivate the will, to gain the heart, to oblige man, and to produce within him the highest degree of moral necessity, which constitutes the most perfect obligation? I say, *moral necessity*; for we are not to destroy the nature of man, he remains always what he is, a free and intelligent being; and as such, the legislator undertakes to direct him by his laws. Hence it is that even the strictest obligations never force the will; but, rigorously speaking, man is always at liberty to comply or not, though, as we commonly say, at his risk and peril. But, if he consults reason, and is willing to follow its dictates, he will take particular care to avoid exercising this metaphysical power in opposition to the laws of his country; an opposition that must terminate in his own misery and ruin.

XII. We have already observed that there are two sorts of obligation; * the one internal, which is the work of reason only, and founded on the good or evil we perceive in the very nature of things; the other external, which is produced by the will of him whom we acknowledge our superior and master. Now the obligation produced by law unites these two sorts of ties, which, by their concurrence, strengthen each other, and thus form the most complete obligation that can be imagined. It is, probably, for this reason that most civilians acknowledge no other obligation, properly so called, but that which is the effect of law, and imposed by a superior. This is true, if we mean only an external obligation, which, indeed, is the strongest tie of man. But it must not be thence inferred that we ought to admit no other sort of obligation. The principles we established, when inquiring into the first origin and the nature of obligation generally considered, and the particular remarks we have just now made on the obligation arising from law, are sufficient, if I mistake not, to evince that there is a

* See chap. vi. sec. 13.

The End of Laws.

primitive, original and internal obligation, which is inseparable from reason, and ought necessarily to concur with the external obligation, in order to communicate to the latter all the necessary force for determining and bending the will, and for influencing effectually the human heart.

By distinguishing rightly these ideas, we shall find, perhaps, that this is one way of reconciling opinions, which seem to be wide from each other, only because they are misunderstood.* Sure it is, at least, that the manner in which we have explained the foundation of sovereignty and dependence coincides, in the main, with Puffendorf's system, as will easily appear by comparing with what this author says, whether in his large work or in his abridgment.

CHAPTER X.

Of the End of Laws—Of their Characters, Differences, &c.

I. SOME, perhaps, will complain that we have dwelt too long on the nature and foundation of sovereignty. But the importance of the subject required us to treat it with care, and to unravel properly its principles. Besides, we apprehend that nothing could contribute better to a right knowledge of the nature of law; and we shall presently see that whatever in fact remains for us still to say concerning this subject, is deduced from the principles just now established.

In the first place, it may be asked, what is the end and design of law?

This question presents itself in two different lights, namely: with respect to the citizen, and with regard to the law-maker; a distinction that must be carefully observed.

The relation of the law-making power to the citizen forms a kind of society between them which the law-maker directs by the

* See the second part chap. vi.

laws he establishes*. But as the society naturally requires there should be some provision made for the good of all those who are the constituent parts thereof, it is by this principle we must judge of the end of laws; and this end, considered with respect to the law-maker, ought to include nothing in it opposite to the end of these very laws, considered with regard to the citizen.

II. The end of the law in regard to the citizen is, that he should conform his actions to it, and by this means acquire happiness. As for what concerns the law-maker, the end he aims at for himself, by giving laws to his fellow men, is the satisfaction and glory arising from the execution of the wise designs he proposes for the preservation of those who have committed the authority to his hands. These two ends of the law should never be separated, one being naturally connected with the other; for it is the happiness of the citizen that forms the satisfaction and glory of the law-maker.

III. We should, therefore, take care not to imagine that laws are properly made in order to bring men under a yoke. So idle an end would be quite unworthy of a law-maker, whose goodness ought to be equal to his power and wisdom, and who should always act up to these perfections. Let us say rather, that laws are made to oblige the citizen to pursue his real interest, and to choose the surest and best way to attain the end he is designed for, which is happiness. With this view the legislator is willing to direct his people better than they could themselves, and gives a check to their liberty, lest they should make a bad use of it, contrary to their own and the public good. In short, the legislator commands rational beings; it is on this footing he treats with them; all his ordinances have the stamp of reason; he is willing to reign over our hearts; and if at any time he employs force, it is in order to bring back to reason those who have unhappily strayed from it, contrary to their own good and that of society.

IV. Wherefore Puffendorf, methinks, speaks somewhat loosely

*See chap. viii. sec. 5.

Law Either Obligatory or Permissive.

in the comparison he draws between law and counsel, where he says, "That counsel tends to the ends proposed by those to whom it is given, and that they themselves can judge of those ends in order to prove or disapprove them. Whereas law aims only at the end of the person who establishes it; and if sometimes it has views in regard to those for whom it was made, it is not their business to examine them. This depends entirely on the determination of the legislator." It would be a much juster way, methinks, of expressing the thing, to say that laws have a double end, relative to the legislator and the people; that the intent of the legislator, in establishing them, is to consult his own satisfaction and glory, by rendering his people happy; that these two things are inseparable; and that it would be doing injustice to the legislator to imagine he thinks only of himself, without any regard to the good of those who are his dependants. Puffendorf seems here, as well as in some other places, to give a little too much into Hobbes' principles.

V. We defined law, a rule, which lays an obligation on projects of doing or omitting certain things, and leaves them at liberty to act or not to act in other matters, according as they judge proper, &c. This is what we must explain here in a more particular manner.

A law-maker has undoubtedly a right to direct the actions of those who are subject to him, according to the ends he has in view. In consequence of this right, he imposes a necessity on them of acting or not acting after a particular manner in certain cases; and this obligation is the first effect of the law. Thence it follows that all actions, not positively commanded or forbidden, are left within the sphere of our natural liberty; and that the law-maker is hereby supposed to grant every body a permission to act in this respect as they think proper; and this permission is a second effect of the law. We may therefore distinguish the law, taken in its full extent, into an obligatory law, and a law of simple permission.

It is true, Grotius, and after him Puffendorf, are of opinion

that permission is not properly, and of itself, an effect or consequence of the law, but a mere inaction of the legislator. *Whatever things, says Puffendorf, the law permits, those it neither commands nor forbids, and therefore it really doth nothing concerning them.*

But though this different manner of considering the thing be not, perhaps, of any great consequence, yet Barbeyrac's opinion, such as he has explained it in his notes on the forecited passages, appears to be much more exact. A permission, arising from the legislator's silence, cannot be considered as a simple inaction. The legislator does nothing but with deliberation and wisdom. If he is satisfied with imposing only in some cases an indispensable necessity of acting after a certain manner, and does not extend this necessity further, it is because he thinks it agreeable to the end he proposes to leave his people at liberty in some cases to do as they please. Wherefore the silence of the legislator imports a positive though tacit permission of whatsoever he has not forbidden or commanded, though he might have done it, and would certainly have done it, had he thought proper. Inso-much that as the forbidden or commanded actions are positively regulated by the law, actions permitted are likewise positively determined by the same law, though after their manner and according to the nature of the thing. In fine, whoever determines certain limits, which he declares we ought not to exceed, does hereby point out how far he permits and consents we should go. Permission, therefore, is as positive an effect of the law as obligation.

VI. This will appear still more evident, if we consider that, having once supposed that we all depend on a superior, whose will ought to be the universal rule of our conduct, the rights attributed to man in this state, by virtue of which he may act safely and with impunity, are founded on the express or tacit permission received from the legislator or the law. Besides, every body agrees that the permission granted by the law, and the right thence resulting, lay other men under an obligation not to resist

The Matter or Object of Laws.

the person who uses his right, but rather to assist him in this respect than do him any prejudice. Obligation, therefore, and permission are naturally connected with each other; and this is the effect of the law, which likewise authorizes those who are disturbed in the exercise of their rights to employ force, or to have recourse to the supreme power, in order to remove these impediments. Hence it is that, after having mentioned in the definition of law that it leaves us in certain cases at liberty to act or not to act, we added that it secures the citizen in the full enjoyment of his rights.

VII. The nature or end of laws show us their matter or object. The matter of laws in general are all human actions; internal and external; thoughts and words, as well as deeds; those which relate to another, and those which terminate in the person himself; so far at least as the direction of those actions may essentially contribute to the particular good of each person, to that of society in general, and to the glory of the government.

VIII. This supposes naturally the three following conditions: 1. That the things ordained by the law be possible to fulfill; for it would be folly, and even cruelty, to require of any person, under the least commination of punishment, whatever is, and always has been, above his strength. 2. The law must be of some utility; for reason will never allow any restraint to be laid on the liberty of the citizen, merely for the sake of the restraint, and without any benefit or advantage arising to him. 3. In fine, the law must be in itself just; that is, conformable to the order and nature of things, as well as the constitution of man. This is what the very idea of rule requires, which, as we have already observed, is the same as that of law.

IX. To these three conditions, which we may call the internal characteristics of law, namely, that it be possible, just, and useful, we may add two other conditions, which in some measure are external; one, that the law may be made sufficiently known; the other, that it be attended with a proper sanction.

1. It is necessary that the laws be sufficiently notified to the

The Requisites of Laws.

citizen; for how could he regulate his actions and motions by those laws if he had never any knowledge of them? The legislator ought, therefore, to publish his laws in a solemn, clear, and distinct manner. But after that, it is the citizen's business to be acquainted with the will of the legislator; and the ignorance or error he may lie under in this respect cannot, generally speaking, be a legitimate excuse in his favor. This is what the civilians mean when they lay down as a maxim, *that ignorance or error in regard to the law is blamable and hurtful*. Were it not so, the laws would be of no effect, but might always, under a pretext of ignorance, be eluded with impunity.

X. 2. The next thing requisite is that the law be attended with a proper sanction.

Sanction is that part of the law which includes the penalty enacted against those who transgress it. With regard to the penalty, it is an evil with which the legislator menaces those citizens who should presume to violate his laws, and which he actually inflicts whenever they violate them; and this, with a design of procuring some good, such as to correct the culpable, and to admonish the rest, but, ultimately, that, his laws being respected and observed, society should enjoy a state of security, quiet and happiness.

All laws have, therefore, two essential parts; the first is the disposition of the law, which expresseth the command or prohibition; the second is the sanction, which pronounces the penalty, and it is the sanction that gives it the proper and particular force of law. For, were the law-maker contented with merely ordaining or forbidding certain things, without adding any kind of menace, this would be no longer a law prescribed by authority, but merely a prudent counsel.

The nature or quality of the punishment should be formally specified in the law. We must also observe that the evil, which constitutes the punishment, properly so called, ought not to be a natural production, or a necessary consequence of the action intended to be punished. It should be, as it were, an occasional

Rewards and Punishments.

evil. For whatever the action may have had in itself, and dangerous in effects and inevitable consequences, cannot be reckoned as proceeding from law, since it would equally happen without it. The menaces, therefore, of the law-maker must, in order to have some weight, be inflictive of such punishments as differ from the evil that necessarily arises from the nature of the thing.

XII. It may be asked, in fine, whether the sanction of laws may not as well consist in the promise of a recompense, as in the commination of punishment? I answer, that this depends, in general, on the will of the law-maker, who may use either of these ways, or even employ them both, according as his prudence directs. But since the question is to know which is the most effectual method the legislator can use, in order to enforce the observance of his laws, and since it is certain that man is naturally more sensibly affected by evil than good, it seems more proper to establish the sanction of law in the commination of punishment than in the promise of recompense. People are seldom induced to violate the law, unless it be with the hope of procuring, at least, some apparent good. The best way, therefore, to prevent this deception, is to remove the bait that allures them, and to annex, on the contrary, a real and inevitable evil to disobedience. Suppose, for instance, two legislators willing to establish the same law, proposed one of them great rewards, and the other severe punishments: the latter would undoubtedly dispose men more effectually to compliance than the former. The most specious promises do not always determine the will; but the view of a rigorous punishment staggers and intimidates it.* But if the legislator, by a particular effect of his bounty and wisdom, is willing to join these two means, and to enforce the law by a double motive of observance, there is then nothing wanting to complete its force, since in every respect it is a perfect sanction.

XIII. The obligation which the laws impose has as great an extent as the right of the legislator; and, consequently, it may

* See Puffendorf on the Law of Nature and Nations, book i. chap. vi. sec. 14, with Barbeyrac's notes.

be said, in general, that all those who are dependent on the legislator are subject to this obligation. But each law in particular obliges those persons only to whom the subject matter may be applied; and this is easily known from the very nature of each law, by which the intention of the legislator is sufficiently expressed.

Nevertheless, it sometimes happens that particular persons are exempted from the obligation of observing the law; and this is what we call dispensation, on which we have a few remarks to make.

1. If the legislator can entirely abrogate a law, by a much stronger reason he can suspend the effect thereof, with regard to any particular person.

2. But we must likewise acknowledge that none but the legislator himself is invested with this power.

3. He never ought to use it without very good reasons, and then he should act with moderation, and according to the rules of equity and prudence. For were he, without discretion or choice, to favor too great a number of people with dispensations, he would enervate the authority of the law; or, were he to refuse it in cases perfectly alike, so unreasonable a partiality would certainly be attended with jealousy and discontent.

XIV. As for what concerns the duration of laws, and the manner in which they are abolished, we are to observe the following principles :

1. In general, the duration of law, as well as its first establishment, depends on the free will and pleasure of the legislator, who cannot reasonably tie up his own hands in this respect.

2. And yet every law, of itself and by its nature, is supposed perpetual, when it contains nothing in its disposition or in the circumstances attending it, that evidently denotes a contrary intention of the legislator, or that may induce us reasonably to presume that it was only a temporary ordinance. The law is a rule. Now every rule is of itself perpetual; and, generally speaking, when the legislator establishes a law, it is not with a design to repeal it.

Different kinds of Law.

3. But as the state of things may happen to alter in such a manner that the law, grown useless or hurtful, can no longer be put into execution, the legislator can and ought, in that case, to repeal and abolish it. It would be absurd and pernicious to society to pretend that laws once enacted ought to subsist forever, let what inconveniency soever arise.

4. This repeal may be made in two different manners, either expressly or tacitly. For when the legislator, well acquainted with the state of things, neglects for a long time to enforce the observance of the laws, or formally permits that affairs relating thereto be regulated in a manner contrary to his disposition, a strong presumption arises of the abrogation of this law, which falls thus of itself, though the legislator has not expressly abolished it.

It is plain we have only glanced here upon the general principles. As for the application that ought to be made of them to each species of laws, it requires some modifications, pursuant to their different nature. But it is not our business to enter here into those particulars.

XV. Law may be divided, 1. Into divine or human, according as it has God or man for its author.

2. Divine law may be sub-divided into two sorts, namely, natural, and positive or revealed.

Natural law is that which so necessarily agrees with the nature and state of man, that without observing its maxims, the peace and happiness of society can never be preserved. As this law has an essential agreeableness with the constitution of human nature, the knowledge thereof may be attained merely by the light of reason, and hence it is called natural.

Positive or revealed law is that which is not founded on the general constitution of human nature, but only on the will of God; though in other respects this law is established on very good reasons, and procures the advantage of those who receive it.

We meet with examples of these two sorts of laws in the ordinances which God gave formerly to the Jews. It is easy to distinguish such as were natural, from those that, being merely cere-

monial or political, had no other foundation than the particular will of God, accommodated to the actual state of that people.

With regard to human laws, considered strictly as such, viz: as originally proceeding from a ruler who presides over society, they are all positive. For, though some natural laws are made the subject of human laws, they do not derive their obligatory force from the human legislator; since they would oblige all the same without any intervention on his part because they come from God.

Before we leave these definitions, we must not forget to observe that the science or art of making and explaining laws, and of applying them to human actions, goes by the general name of *jurisprudence*.

CHAPTER XI.

Of the Morality of Human Actions.

I. LAW being the rule of human actions, in a comparative view, we observe that the latter are either conformable or opposite to the former; and this sort of qualification of our actions in respect to law is called *morality*.

The term of *morality* comes from *mores* or manners. Manners, as we have already observed, are the free actions of man, considered as susceptible of direction and rule. Thus we call morality the relation of human actions to the law by which they are directed; and we give the name of moral philosophy to the collection of those rules by which we are to square our actions.

II. The morality of actions may be considered in two different lights; first, in regard to the manner in which the law disposes of them; and second, in relation to the conformity or opposition of those same actions to the law.

 Actions, either Commanded, Forbidden or Permitted.

In the first consideration, human actions are either commanded or forbidden, or permitted.

As we are indispensably obliged to do what is commanded, and to abstain from what is forbidden by a lawful superior, civilians consider commanded actions as necessary, and forbidden actions as impossible. Not that man is deprived of a physical power of acting contrary to law, and incapable if he has a mind of exercising this power. But since his acting after this manner would be opposite to right reason, and inconsistent with his actual state of dependence, it is to be presumed that a reasonable and virtuous man, continuing and acting as such, could not make so bad a use of his liberty; and this presumption is, in itself, too reasonable and honorable to humanity not to meet with approbation. *Whatever* (say the Roman lawyers) *is injurious to piety, reputation or modesty, and, in general, to good manners, ought to be presumed impossible.*

III. With regard to permitted actions, they are such as the law leaves us at liberty to do if we think proper. Upon which we must make two or three remarks:

1. We may distinguish two sorts of permission; one full and absolute, which not only gives us a right to do certain things with impunity, but, moreover, is attended with a positive approbation of the legislator. The other is an imperfect permission, or a kind of toleration, which implies no approbation, but a simple impunity.

2. The permission of natural laws always denotes a positive approbation of the legislator; and whatever happens in consequence thereof is innocently done, and without any violation of our duty. For it is evident that God could not positively permit the least thing that is bad in its nature.

3. It is otherwise in respect to the permission of human laws. We may indeed justly and with certainty infer that a legislator has not thought proper to forbid or punish some particular things; but it does not always thence follow that he really approves those

things, and much less that they may be innocently done, and without any breach of duty.

IV. The other manner in which we may view the morality of human actions, is with regard to their conformity or opposition to the law. In this respect actions are divided into good or just, bad or unjust, and indifferent.

An action morally good or just, is that which in itself is exactly conformable to some obligatory law, and, moreover, is attended with the circumstances and conditions required by the legislator.

I said, 1. *a good or just action*, for there is properly no difference between the goodness and justice of actions; and there is no necessity to deviate here from the common language which confounds these two ideas. The distinction which Puffendorf makes between these two qualities is quite arbitrary, and even he himself afterwards confounds them.

2. I said an action *morally good*, because we do not consider here the intrinsic and natural goodness of actions, by virtue of which they redound to the physical good of man; but only the relation of agreeableness they have to the law which constitutes their moral goodness. And, though these two sorts of goodness are always found inseparably united in things ordained by natural law, yet we must not confound these two different relations.

V. In fine, to distinguish the general conditions whose concurrence is necessary in order to render an action morally good with respect to the agent, I have added, *that this action ought to be in itself exactly conformable to the law, and accompanied, moreover, with the circumstances and conditions required by the legislator*. And first, it is necessary that this action should comply exactly, and through all its parts, with the tenor of what the law ordains. For as a right line is that whose points correspond to the rule without the least deviation, in like manner an action, rigorously speaking, cannot be just, good or right, unless it agrees exactly and in every respect with the law. But even this is not sufficient; the action must be preformed, also, pursuant to the manner required and intended by the legislator. And in

the first place it is necessary, it be done with a competent knowledge, that is, we must know that what we do is conformable to the law; otherwise the legislator would have no regard for the action, and our labor would be entirely lost. In the next place, we must act with an upright intention and for a good end, namely, to fulfill the views of the legislator, and to pay a due obedience to the law; for, if the agent's intention be bad, the action, instead of being deemed good, may be imputed to him as vicious. In fine, we should act through a good motive; I mean a principle of respect for the legislator, of submission to the law, and from a love of our duty; for plain it is that all these conditions are required by the legislator.

VI. What has been above affirmed concerning good actions, sufficiently shows us the nature of those which are bad or unjust. These are, in general, such as of themselves, or by their concomitant circumstances, are contrary to the disposition of an obligatory law, or to the intention of the legislator.

There are, therefore, two general springs of injustice in human actions; one proceeds from the action considered in itself, and from its manifest opposition to what is commanded or prohibited by the law. Such as, for example, the murder of an innocent person. And all these kinds of actions, intrinsically bad, can never become good, whatever may be in other respects the intention or motive of the agent. We cannot employ a criminal action as a lawful mean to attain an end in itself good; and thus we are to understand the common maxim, *evil must not be done that good may come of it*. But an action, intrinsically and as to its substance good, may become bad, if it be accompanied with circumstances directly contrary to the legislator's intention; as, for instance, if it be done with a bad view, and through a vicious motive. To be liberal and generous towards our fellow citizens is a good and commendable thing in itself; but if this generosity is practiced merely with ambitious views, in order to become insensibly master of the commonwealth, and to oppress the public liberty, the perversity of the motive, and the injustice of the design, render this action criminal.

Distinction Between Just and Unjust Actions.

VII. All just actions are, properly speaking, equally just; by reason that they have all an exact conformity to the law. It is not the same with unjust or bad actions; which, according as they are more or less opposite to the law, are more or less vicious; similar in this respect to curved lines, which are more or less so in proportion as they deviate from the rule. We may, therefore, be in several ways wanting in our duty. Sometimes people violate the law deliberately, and *with malice prepense*; which is undoubtedly the very highest degree of iniquity, because this kind of conduct manifestly indicates a formal and reflective contempt of the legislator and his orders; but sometimes we are apt to sin through neglect and inadvertency, which is rather a fault than a crime. Besides, it is plain that this neglect has its degrees, and may be greater or less, and deserving of more or less censure. And, as in every thing unsusceptible of an exact and mathematical measure, we may always distinguish at least three degrees, namely, two extremes and a middle, so civilians distinguish three degrees of fault or negligence; a gross fault, a slight one, and a very slight one. It is sufficient to have mentioned these principles, the explication and distinct account whereof will naturally take place when we come to the particular questions relating to them.

VIII. But we must carefully observe that what essentially constitutes the nature of an unjust action, is its direct opposition or contrariety to the disposition of the law, or to the intention of the legislator; which produces an intrinsic defect in the matter or form of that action. For, though in order to render an action morally good it is necessary, as we have already observed, that it be entirely conformable to the law, with respect as well to the substance as to the manner and circumstance, yet we must not thence conclude that the defect of some of those conditions always renders an action positively bad or criminal. To produce this effect, there must be a direct opposition, or formal contrariety between the action and the law; a simple defect of conformity being insufficient for that purpose. This defect is indeed sufficient to render an action not positively good or just; how-

Indifferent Actions.

ever, it does not become therefore bad, but only indifferent. For example, if we perform an action good in itself, without knowing for what reason, or even that it is commanded by the law, or if we act through a different motive from that prescribed by the law, but in itself innocent and not vicious, the action is reputed neither good nor bad, but merely indifferent.

IX. There is, therefore, such a thing as indifferent actions, which hold a middle rank, as it were, between just and unjust. These are such as are neither commanded nor prohibited, but which the law leaves us at liberty to do or to omit, according as we think proper. That is, those actions are referred to a law of simple permission, and not to an obligatory law.

Now, that such actions there are, is what no one can reasonably question. For what a number of things are there, which, being neither commanded nor forbidden by any law, whether divine or human, have consequently nothing obligatory in their nature, but are left to our liberty to do or to omit, just as we think proper. It is, therefore, an idle subtlety in schoolmen to pretend that an action cannot be indifferent, unless it be in an abstract consideration, as stripped of all the particular circumstances of person, time, place, intention, and manner. An action, divested of all these circumstances, is a mere *Ens rationis*; and, if there be really any indifferent actions, as undoubtedly there are, they must be relative to particular circumstances of person, time, place, &c.

X. Good or bad actions may be ranged under different classes, according to the object to which they relate. Good actions, referred to God, are comprised under the name of *piety*. Those which relate to ourselves are distinguished by the words *wisdom*, *temperance*, *moderation*. Those which concern other men are included under the terms of *justice* and *benevolence*. We only anticipate here the mentioning of this distinction, because we must return to it again when we come to treat of natural law. The same distinction is applicable to bad actions, which belong either to *impiety*, *intemperance*, or *injustice*.

XI. It is common to propose several divisions of justice. That we may not be silent on this article, we shall observe,

1. That justice may, in general, be divided into perfect or rigorous. The former is that by which we perform towards our neighbor whatever is due to him, in virtue of a perfect or rigorous right, that is, the execution of which he may demand by forcible means, unless we satisfy him freely, and with a good will; and it is in this strict sense that the word *justice* is generally understood. The second is that by which we perform towards another the duties owing to him only in virtue of an imperfect and non-rigorous obligation, which cannot be insisted on by violent methods; but the fulfilling of them is left to each person's honor and conscience.* These kinds of duties are generally comprehended under the appellations of humanity, charity, or benevolence, in opposition to rigorous justice, or justice, properly so called. This division of justice coincides with that of Grotius into *expletive* and *attributive*.

2. We might subdivide rigorous justice into that which is exercised between equals, and that which takes place between superior and inferior. The former contains as many different species as there are duties, which one man may in rigor require of every other man, considered as such, and one citizen of every fellow citizen. The latter includes as many species as there are different societies, where some command and others obey.

3. There are other divisions of justice, but such as seem needless and far from being exact. For example, that of universal and particular justice, taken in the manner as Puffendorf explains it, appears incorrect, inasmuch as one of the members of the division is included in the other. The subdivision of particular justice into distributive and commutative is incomplete; because it includes only what is due to another by virtue of some pact or engagement, notwithstanding there are many things which our neighbor may require of us in rigor without any regard to pact or convention. And we may observe in general, by reading what Grotius and Puffendorf have written concerning this subject, that

*See chap. vii. §8.

Relative Estimation of Moral Actions.

they are at a loss themselves to give a clear and exact idea of these different kinds of justice. Hence it is manifest that we had better waive all these scholastic divisions, contrived in imitation of those of Aristotle, and abide by our first division. And indeed it is only out of respect to the common opinion that we have taken any notice thereof.

XII. Besides what we may call the quality of moral actions, they have likewise a kind of quantity, which, by comparing the good actions to one another, as also the bad in the same manner, leads us to a sort of relative estimation, in order to mark the greater or less degree of evil to be found in each. We shall give here the principles necessary for this estimation.

1. These actions may be considered with regard to their object. The nobler the object, the higher the excellence of the good action done towards this object; and a bad action, on the contrary, becomes more criminal.

2. In respect to the quality and state of the agent. Thus a favor or benefit, received of an enemy, excels that which is conferred upon us by a friend. And, on the contrary, an injury done us by a friend is more sensible and more atrocious than that which is committed by an enemy.

3. In reference to the very nature of the action, according as there is more or less trouble to perform. The more a good action is difficult, supposing every thing else equal, the more worthy it is of praise and admiration. But the easier it is to abstain from a bad action, the more it is blamable and enormous in comparison to another of the same species.

4. In relation to the effects and consequences of the action. An action is so much the better or worse in proportion as we foresee that its consequences must be more or less advantageous or hurtful.

5. We may add, the circumstances of time, place, &c., which are also capable of making the good or bad actions surpass one another in excellence or badness. We have borrowed these remarks from one of Barbeyrac's notes on Puffendorf.

XIII. Let us observe, in fine, that morality is attributed to

persons as well as actions ; and, as actions are good or bad, just or unjust, we say likewise of men that they are good or bad, virtuous or vicious.

A virtuous man is he who has a habit of acting conformably to the laws of his duty. A vicious man is one who has the opposite habit.

Virtue, therefore, consists in a habit of acting according to the laws ; and vice in the contrary habit.

I said that virtue and vice are habits. Hence, to judge properly of these two characters, we should not stop at some particular action ; we ought to consider the whole series of the life and ordinary conduct of man. We should not, therefore, rank among the number of vicious men those who, through weakness or otherwise, have been sometimes induced to commit a bad action ; as, on the other hand, those who have done a few acts of virtue do not merit the title of honest men. There is no such thing to be found in this world as virtue in every respect complete ; and the weakness inseparable from man requires we should not judge him with full rigor. Since it is allowed that a virtuous man may, through weakness and surprise, commit some unjust action, so it is but right we should likewise allow that a man, who has contracted several vicious habits, may, notwithstanding, in particular cases, do some good action, acknowledged and performed as such. Let us not suppose men worse than they really are, but take care to distinguish the several degrees of iniquity and vice, as well as those of probity and virtue.

PART II.—OF THE LAW OF NATURE.

CHAPTER I.

In what the Law of Nature consists, and that there is such a Thing.—First, Considerations drawn from the Existence of God and his Authority over us.

I. AFTER having settled the general principles of law, our business is now to apply them to natural law in particular. The questions we have to examine in this second part are of no less importance than to know whether man, by his nature and constitution, is really subject to laws, properly so called? What are these laws? Who is the superior that imposes them? By what method or means is it possible to know them? Whence results the obligation of observing them? What consequence may follow from our negligence in this respect? And, in fine, what advantage, on the contrary, may arise from the observance of these laws?

II. Let us begin with a proper definition of the terms. By natural law, we understand a law that God imposes on all men, and which they are able to discover and know by the sole light of reason and by attentively considering their state and nature.

Natural law is likewise taken for the system, assemblage, or body of the laws of nature.

Natural jurisprudence is the art of attaining to the knowledge of the laws of nature, of explaining and applying them to human actions.

III. But whether there be really any natural laws is the first question that presents itself here to our inquiry. In order to make a proper answer, we must ascend to the principles of natural theology, as being the first and true foundation of the law of nature. For when we are asked whether there are any natural laws,

this question cannot be resolved but by examining the three following articles: 1. Whether there is a God? 2. If there is a God, whether he has a right to impose laws on man? 3. Whether God actually exercises his right in this respect, by really giving us laws, and requiring we should square thereby our action? These three points will furnish the subject of this and the following chapters.

IV. The existence of God, that is, of a first intelligent and self-existent being, on whom all things depend as on their first cause, and who depends himself on no one; the existence, I say, of such a being is one of those truths that show themselves to us at the first glance. We have only to attend to the evident and sensible proofs that present themselves to us, as it were, from all parts.

The chain and subordination of causes among themselves, which necessarily requires we should fix on a first cause, the necessity of acknowledging a first mover, the admirable structure and order of the universe, are all so many demonstrations of the existence of God within the reach of every capacity. Let us unfold them in a few words.

V. 1. We behold an infinite number of objects, which, being united, form the assemblage we call universe. Something, therefore, must have always existed. For were we to suppose a time in which there was absolutely nothing, it is evident that nothing could have ever existed; because whatsoever has a beginning must have a cause of its existence; since nothing can produce nothing. It must be, therefore, acknowledged that there is some eternal being who exists necessarily and of himself; for he can be indebted to no one else for his origin; and it implies a contradiction that such a being does not exist.

Moreover, this eternal being, who necessarily and of himself subsists, is endued with reason and understanding. For to pursue the same manner of arguing, were we to suppose a time in which there was nothing but inanimate beings, it would have been impossible for intelligent beings, such as we now behold, ever to exist. Intellection can no more proceed from a blind and unintelligent cause, than a being of any kind whatsoever can come

The Necessity of a Self-existent Being.

from nothing. There must, therefore, have always existed a father of spiritual beings, an external mind, the source whence all others derive their existence. Let what system soever be adopted concerning the nature and origin of the soul, our proof subsists still in its force. Were it even to be supposed that the cogitative part of man is no more than the effect of a certain motion or modification of matter, yet we should still want to know how matter acquired this activity, which is not essential to it, and this particular and so much admired organization, which it cannot impart to itself. We should inquire, who is it that has modified the body in such a manner proper to produce such wonderful operations as those of intellection, which reflects, which acts on the very body itself with command, which surveys the earth, and measures the heavens, recollects past transactions, and extends its views to futurity? Such a masterpiece must come from the hands of an intelligent cause; wherefore, it is absolutely necessary to acknowledge a first eternal and intelligent Being.

VI. An eternal Spirit, who has within himself the principle of his own existence and of all his faculties, can be neither changed nor destroyed; neither dependent nor limited; he should even be invested with infinite perfection, sufficient to render him the sole and first cause of all, so that we may have no occasion to seek for any other.

But does not, some will ask, this quality of an eternal and intelligent being belong to matter itself, to the visible world, or to some of the parts thereof?

I answer, that this supposition is absolutely contrary to all our ideas. Matter is not essentially and of itself intelligent; nor can it be supposed to acquire intellection but by a particular modification, received from a cause supremely intelligent. Now, this first cause cannot have such a modification from any other being, for he thinks essentially and of himself; wherefore, he cannot be a material being. Besides, as all the parts of the universe are variable and dependant, how is it possible to reconcile this with the idea of an infinite and all-perfect being?

As for what relates to man, his dependence and weakness are

much more sensible than those of other creatures. Since he has no life of himself, he cannot be the efficient cause of the existence of others. He is unacquainted with the structure of his own body, and with the principle of life; incapable of discovering in what manner motions are connected with ideas, and which is the proper spring of the empire of the will. We must, therefore, look out for an efficient, primitive, and original cause of mankind beyond the human chain, be it supposed ever so long; we must trace the cause of each part of the world beyond this material and visible world.

VII. 2. After this first proof, drawn from the necessity of a first, eternal and intelligent being, distinct from matter, we proceed to a second, which shows us the Deity in a more sensible manner, and more within the reach of common capacities. The proof I mean is the contemplation of this visible world, wherein we perceive a motion and order which matter has not of itself, and must, therefore, receive from some other being.

Motion or active force is not an essential quality of body. Extension is of itself rather a passive being; it is easily conceived at rest; and if it has any motion, we may well conceive it may lose it without being stripped of its existence; it is a quality or state that passes and is accidentally communicated from one body to another. The first impression must, therefore, proceed from an intrinsic cause; and, as Aristotle has well expressed it,* *the first mover of bodies must not be movable himself, must not be a body.* This has been also agreed to by Hobbes. *But the acknowledging, says he, of one God eternal, infinite and omnipotent, may more easily be derived from the desire men have to know the causes of natural bodies, and their several virtues and operations, than from the fear of what was to befall them in time to come. For he who, from any effect he seeth come to pass, should reason to the next and immediate cause thereof, and thence to the cause of that cause, and plunge himself profoundly in the pursuit of cause, shall at last come to this, that there must be (as even the heathen philosophers confessed) one*

* Aristot. Metaphys.

The Beauty and Order of the Universe.

first mover; that is, a first and eternal cause of all things; which is that which men mean by the name of God.

VIII. 3. But if matter has not been able to move of itself, much less was it able to move to the exact degree, and with all the determinations necessary to form such a world as we behold rather than a confused chaos.

In fact, let us only cast our eyes on this universe, and we shall every where discover, even at the first glance, an admirable beauty, regularity and order; and this admiration will increase in proportion as, in searching more closely into nature, we enter into the particulars of the structure, proportion and use of each part. For then we shall clearly see that every thing is relative to a certain end, and that these particular ends, though infinitely varied among themselves, are so dexterously managed and combined as to conspire all to a general design. Notwithstanding this amazing diversity of creatures, there is no confusion; we behold several thousand different species which preserve their distinct form and qualities. The parts of the universe are proportioned and balanced, in order to preserve a general harmony; and each of those parts has exactly its proper figure, proportions, situation and motion, either to produce its particular effect or to form a beautiful whole.

It is evident, therefore, that there is a design, a choice, a visible reason in all the works of nature; and, consequently, there are marks of wisdom and understanding, obvious, as it were, even to our very senses.

IX. Though there have been some philosophers who have attributed all these phenomena to chance, yet this is so ridiculous a thought that I question whether a more extravagant chimera ever entered the mind of man. Is it possible for any one to persuade himself, seriously, that the different parts of matter, having been set in some unaccountable manner in motion, produced of themselves the heavens, the stars, the earth, the plants, and even animals and men, and whatever is most regular in the organization? A man that would pass the like judgment on the least edifice, on a book or picture, would be looked upon as a mad, extravagant

person. How much more shocking is it to common sense to attribute to chance so vast a work, and so wonderful a composition as this universe?

X. It would be equally frivolous to allege the eternity of the world, in order to exclude a first intelligent cause. For, besides the marks of novelty we meet with in the history of mankind, as the origin of nations and empires, and the invention of arts and sciences, &c., besides the assurance we have from the most general and most ancient tradition that the world has had a beginning, (a tradition which is of great weight in regard to a matter of fact like this) beside, I say, all this, the very nature of the thing does not allow us to admit of this hypothesis any more than that of chance. For the question is still, whence comes this beautiful order, this regular structure and design; in a word, whence proceed those marks of reason and wisdom, that are so visibly displayed in all parts of the universe? To say that it has been always so, without the intervention of an intelligent cause, does not explain the thing, but leaves us in the same embarrassment, and advances the same absurdity as those who, awhile ago, were speaking to us of chance. For this is in reality telling us that whatever we behold throughout the universe is blindly arranged without design, choice, cause, reason or understanding. Hence the principal absurdity of the hypothesis of chance occurs likewise in this system, with this difference only, that by establishing the eternity of the world, they suppose a chance that from all eternity hit upon order; whereas those who attribute the formation of the world to the fortuitous junction of its parts, suppose that chance did not succeed till a certain time, when it fell in at length with order after an infinite number of trials and fruitless combinations. Both acknowledge, therefore, no other cause than chance, or, properly speaking, they acknowledge none at all; for chance is no real cause; it is a word that cannot account for a real effect, such as the arrangement of the universe.

It would not be a difficult matter to carry these proofs to a much greater length, and even to increase them with an additional number. But this may suffice for a work of this kind, and the little

God has a Right to Prescribe Laws.

we have said entitles us, methinks, to establish the existence of a *first cause*, or of a *Creator*, as an incontestable truth, that may serve henceforward for the basis of all our reasonings.

XI. As soon as we have acknowledged a Creator, it is evident that he has a supreme right to lay his commands on man, to prescribe rules of conduct to him, and to subject him to laws; and it is no less evident that man, on his side, finds himself, by his natural constitution, under an obligation of subjecting his actions to the will of the Supreme Being.

We have already shown* that the true foundation of sovereignty, in the person of the sovereign, is power united with wisdom and goodness; and that, on the other hand, weakness and wants in the subjects are the natural cause of dependance. We have only, therefore, to see whether all these qualities of sovereign are to be found in God; and whether men, on their side, are in a state of infirmity and wants, so as to depend necessarily on him for their happiness.

XII. It is beyond doubt that he, who exists necessarily and on himself, and has created the universe, must be invested with infinite power. As he has given existence to all things by his own will, he may likewise preserve, annihilate, or change them as he pleases.

But his wisdom is equal to his power. Having made every thing, he must know every thing, as well the causes as the effects thence resulting. We see, besides, in all his works the most excellent ends, and a choice of the most proper means to attain them; in short, they all bear, as it were, the stamp of wisdom.

XIII. Reason informs us that God is a being essentially good; a perfection, which seems to flow naturally from his wisdom and power. For how is it possible for a being who, of his nature, is infinitely wise and powerful, to have any inclination to hurt? Surely no sort of reason can ever determine him to it. Malice, cruelty, and injustice are always a consequence of ignorance or weakness. Let man, therefore, consider but never so little

*See part i. chap. ix.

the things which surround him, and reflect on his own constitution, he will discover, both within and without himself, the benevolent hand of his Creator, who treats him like a father. It is from God we hold our life and reason; it is he that supplies most abundantly our wants, adding the useful to the necessary, and the agreeable to the useful. Philosophers observe that whatever contributes to our preservation, has been arrayed with some agreeable quality. Nourishment, repose, action, heat, cold, in short, whatever is useful to us, pleases us in its turn and so long as it is useful. Should it cease to be so, because things are carried to a dangerous excess, we have notice therefore by an opposite sensation. The allurements of pleasure invites us to use them when they are necessary for our wants; disrelish and lassitude induce us to abstain from them when they are likely to hurt us. Such is the happy and sweet economy of nature, which annexes a pleasure to the moderate exercise of our senses and faculties, insomuch that whatever surrounds us becomes a source of satisfaction when we know how to use it with discretion. What can be more magnificent, for example, than this great theatre of the world, in which we live, and this glittering decoration of heaven and earth, exhibiting a thousand agreeable objects to our view! What satisfaction does not the mind receive from the sciences, by which it is exercised, enlarged, and improved! What conveniences do not we draw from human industry! What advantage do not we derive from an intercourse with our equals! what charms in their conversation! what sweetness in friendship and the other connections of the heart! When we avoid the excess and abuse of things, the greatest part of life abounds with agreeable sensations. And if to this we add, that the laws which God gives us tend, as hereafter we shall see, to perfect our nature, to prevent all kind of abuse, and to confine us to a moderate use of the good things of life, on which the preservation, excellence, and happiness, as well public as private, of man depend, what more is there wanting to convince us that the goodness of God is not inferior either to his wisdom or power?

We have, therefore, a superior undoubtedly invested with all

He has Prescribed Rules of Conduct.

the qualities necessary to found the most legitimate and most extensive authority. And since, on our side, experience shows us that we are weak, and subject to divers wants; and since every thing we have, we have from him, and he is able either to augment or diminish our enjoyments, it is evident that nothing is wanting here to establish on the one side the absolute sovereignty of God, and on the other hand our unlimited dependence.

CHAPTER II.

That God, in Consequence of His Authority over us, has Actually thought Proper to Prescribe to us Laws or Rules of Conduct.

I. To prove the existence of God, and our dependence in respect to him, is establishing the right he has of prescribing laws to man. But this is not sufficient; the question is whether he has actually thought proper to exercise this right. He can undoubtedly impose laws on us; but has he really done it? And, though we depend on him for our life, and for our physical faculties, has he not left us in a state of independence in respect to the moral use to which we are to apply them. This is a third and capital point we have still left to examine.

II. 1. We have made some progress already in this research, by discovering all the circumstances necessary to establish an actual legislature. On the one side, we find a superior, who, by his nature, is possessed in the very highest degree of all the conditions requisite to establish a legitimate authority; and on the other, we behold man, who is God's creature, endowed with understanding and liberty, capable of acting with knowledge and choice, sensible of pleasure and pain, susceptible of good and evil, of rewards and punishments. Such an aptitude of giving and receiving laws cannot be useless. This concurrence of relations and circumstances undoubtedly denotes an end, and must

have some effect; just as the particular organization of the eye shows we are destined to see the light. Why should God have made us exactly fit to receive laws if he intended none for us? This would be creating so many idle and useless faculties. It is, therefore, not only possible, but very probable, that our destination in general is such, unless the contrary should appear from much stronger reasons. Now, instead of there being any reason to destroy this first presumption, we shall see that every thing tends to confirm it.

III. 2. When we consider the beautiful order which the Supreme Wisdom has established in the physical world, it is impossible to persuade ourselves that he has abandoned the spiritual or moral world to chance and disorder. Reason, on the contrary, tells us that a wise being proposes to himself a reasonable end in every thing he does, and that he uses all the necessary means to attain it. The end which God had in view with regard to his creatures, and particularly with respect to man, cannot be any other, on the one side, than his glory; and, on the other, the perfection and happiness of his creatures, so far as their nature or constitution will admit. These two views, so worthy of the Creator, are perfectly combined. For the glory of God consists in manifesting his perfections, his power, his goodness, wisdom, and justice; and these virtues are nothing else but the love of order and of the good of the whole. Thus a being absolutely perfect and supremely happy, willing to conduct man to that state of order and happiness which suits his nature, cannot but be willing, at the same time, to employ whatever is necessary for such an end; and, consequently, he must approve of those means that are proper, and disapprove of such as are improper for attaining it. Had the constitution of man been merely physical or mechanical, God himself would have done whatever is expedient for his work; but man being a free and intelligent creature, capable of discernment and choice, the means which the Deity uses to conduct him to his end ought to be proportioned to his nature; that is, such as man may engage in and concur with by his own actions.

Confirmation of Preceding Proofs.

Now, as all means are not equally fit to conduct us to a certain end, all human actions cannot therefore be indifferent. Plain it is, that every action, contrary to the ends which God has proposed, is not agreeable to the divine Majesty; and that he approves, on the contrary, those which of themselves are proper to promote his ends. Since there is a choice to be made, who can question but our Creator is willing we should take the right road; and that, instead of acting fortuitously and rashly, we should behave like rational creatures, by exercising our liberty and the other faculties he has given us, in the manner most agreeable to our state and destination, in order to promote his views, and to advance our own happiness, together with that of our fellow creatures?

IV. These considerations assume a new force when we attend to the natural consequences of the opposite system. What would become of man and society, were every one to be so far master of his actions as to do every thing he listed, without having any other principle of conduct than caprice or passion? Let us suppose that God, abandoning us to ourselves, had not actually prescribed any rules of life, or subjected us to laws; most of our talents and faculties would be of no manner of use to us. To what purpose would it be for man to have the light of reason, were he to follow only the impulse of instinct, without watching over his conduct? What would it avail him to have the power of suspending his judgment were he to yield stupidly to the first impressions? And of what service would reflection be were he neither to choose nor deliberate; and were he, instead of listening to the counsels of prudence, to be hurried away by blind inclinations? These faculties, which form the excellence and dignity of our nature, would not only be rendered hereby entirely frivolous, but, moreover, would become prejudicial even by their excellence; for the higher and nobler the faculty is, the more the abuse of it proves dangerous.

This would not only be a great misfortune for man, considered alone, and in respect to himself, but would still prove a greater evil to him when viewed in the state of society. For this more

than any other state requires laws, to the end that each person may set limits to his pretensions, without invading another man's right.

Were it otherwise, licentiousness must be the consequence of independence. To leave men abandoned to themselves is leaving an open field to the passions, and paving the way for injustice, violence, perfidy, and cruelty. Take away natural laws, and that moral tie which supports justice and honesty in a whole nation, and establishes also particular duties either in families or in the other relations of life; man would be then the most savage and ferocious of all animals. The more dexterous and artful he is, the more dangerous he would prove to his equals; his dexterity would degenerate into craft, and his art into malice. Then we should be divested of all the advantages and sweets of society, and thrown into a state of war and libertinism.

V. 3. Were any one to say that man himself would not fail to remedy these disorders by establishing laws in society, (beside that human laws would have very little force were they not founded on the principles of conscience,) this remark shows there is a necessity for laws in general, whereby we gain our cause. For if it be agreeable to the order of reason that men should establish a rule of life among themselves, in order to be screened from the evils they might apprehend from one another, and to procure those advantages that are capable of forming their private and public happiness, this alone ought to convince us that the Creator, infinitely wiser and better than ourselves, must have undoubtedly pursued the same method. A good parent, who takes care to direct his children by his authority and counsels, is able to preserve peace and order in his family. Is it then to be imagined that the common father of mankind should neglect to give us the like assistance? And if a wise sovereign has nothing so much at heart as to prevent licentiousness by salutary regulations, how can any one believe that God, who is a much greater friend to man than man is to his equals, has left all mankind without direction and guide, even on the most important matters, on which our whole happiness depends?

 Proof from the Principles of our Nature.

Such a system would be no less contrary to the goodness than to the wisdom of God. We must, therefore, have recourse to other ideas, and conclude that the Creator having, through a pure effect of his bounty, created man for happiness, and having implanted in him an insuperable inclination to felicity, subjecting him at the same time to live in society, he must have given him also such principles as are capable of inspiring him with a love of order, and rules to point out the means of procuring and attaining it.

VI. 4. But let us enter into ourselves, and we shall actually find that what we ought to expect in this respect from the divine wisdom and goodness is dictated by right reason, and by the principles engraved in our hearts.

If there be any speculative truths that are evident, or if there be any certain axioms that serve as a basis to the sciences, there is no less certainty in some principles that are laid down in order to direct our conduct, and to serve as the foundation of morality. For example: *that the all-wise and all-bountiful Creator merits the respects of the creature; that man ought to seek his own happiness; that we should prefer the less to the greater evil; that a benefit deserves a grateful acknowledgment; that the state of order excels that of disorder, &c.* Those maxims, and others of the same sort, differ very little in evidence from these, *The whole is greater than its part; or the cause precedes the effect, &c.* Both are dictated by pure reason; and hence we feel ourselves forced, as it were, to give our assent to them. These general principles are seldom contested; if there be any dispute, it relates only to their application and consequences. But so soon as the truth of these principles is discovered, their consequences, whether immediate or remote, are entirely as certain, provided they be well connected; the whole business being to deduce them by a train of close and conclusive argumentations.

VII. In order to be sensible of the influence which such principles, with their legitimate consequences, ought to have over our conduct, we have only to recollect what has been already

said, in the first part of this work,* concerning the obligation we are under of following the dictates of reason. As it would be absurd in speculative matters to speak and judge otherwise than according to that light which makes us discern truth from falsehood, so it would be no less preposterous to deviate in our conduct from those certain maxims which enable us to distinguish good from evil. When once it is manifest that a particular manner of acting is suitable to our nature and to the great end we have in view, and that another, on the contrary, does not suit our constitution or happiness, it follows that man, as a free and rational creature, ought to be very attentive to this difference, and to take his resolutions accordingly. He is obliged to it by the very nature of the thing; because it is absolutely necessary, when a person is desirous of the end, to be desirous also of the means; and he is obliged for it, moreover, because he cannot mistake the intention and will of his superior in this respect.

VIII. In fact, God being the author of the nature of things and of our constitution, if, in consequence of this nature and constitution, we are reasonably determined to judge after a certain manner, and to act according to our judgment, the Creator sufficiently manifests his intention, so that we can no longer be ignorant of his will. The language, therefore, of reason is that of God himself. When our reason tells so clearly *that we must not return evil for good*, it is God himself, who, by this internal oracle, gives us to understand what is good and just, what is agreeable to him and suitable to ourselves. We said that it is not at all probable that the good and wise Creator should have abandoned man to himself without a guide and direction for his conduct. We have here a direction that comes from him; and since he is invested in the very highest degree, as we have already observed, with the perfections on which a legitimate superiority is founded, who can pretend to question that the will of such a superior is law to us? The reader, I suppose, has not forgot the conditions requisite to constitute a law; conditions that are all to be met with in the present case. 1. There is a rule. 2. This

* Chap. vi.

Moral Instinct Defined.

rule is just and useful. 3. It comes from a superior on whom we entirely depend. 4. In fine, it is sufficiently made known to us by principles engraved in our hearts, and even by our own reason. It is, therefore, a law, properly so called, which we are really obliged to observe. But let us inquire a little further, by what means this natural law is discovered, or, which amounts to the same thing, from what source we must derive it. What we have hitherto proved only in a general manner, will be further illustrated and confirmed by the particulars on which we are now going to enlarge. For nothing can be a stronger proof of our having hit upon the true principles, than, when unfolding and considering them in their different branches, we find they are always conformable to the nature of things.

CHAPTER III.

Of the Means, by which we discern what is Just and Unjust, or what is dictated by Natural Laws, namely, 1. Moral Instinct, and 2. Reason.

I. WHAT has been said in the preceding chapter already shows that God has invested us with two means of perceiving or discerning moral good and evil; the first is only a kind of instinct, the second is reason or judgment.

Moral instinct, I call that natural bent or inclination which prompts us to approve of certain things as good and commendable, and to condemn others as bad and blamable, independent of reflection. Or, if any one has a mind to distinguish this instinct by the name of moral sense, as Mr. Hutcheson has done, I shall then say that it is a faculty of the mind, which instantly discerns, in certain cases, moral good and evil, by a kind of sensation and taste, independent of reason and reflection.

II. Thus, at the sight of a man in misery or pain, we feel immediately a sense of compassion, which prompts us to relieve

Whence it Proceeds.

him. The first emotion that strikes us after receiving a benefit, is to acknowledge the favor and to thank our benefactor. The first disposition of one man towards another, abstracting from any particular reason he may have of hatred or fear, is a sense of benevolence, as towards his fellow creature, with whom he finds himself connected by a conformity of nature and wants. We likewise observe that, without any great thought or reasoning, a child or untutored peasant is sensible that ingratitude is a vice, and exclaims against perfidy as a black and unjust action, which highly shocks him, and is absolutely repugnant to his nature. On the contrary, to keep one's word, to be grateful for a benefit, to pay every body their due, to honor our parents, to comfort those who are in distress or misery, are all so many actions which we cannot but approve and esteem as just, good, honest, beneficent, and useful to mankind. Hence the mind is pleased to see or hear such acts of equity, sincerity, humanity and beneficence; the heart is touched and moved, and reading them in history we are seized with admiration, and extol the happiness of the age, nation or family, distinguished by such noble examples. As for criminal instances, we cannot see or hear them mentioned without contempt or indignation.

III. If any one should ask, whence comes this emotion of the heart which prompts us, almost without any reasoning or inquiry, to love some actions and to detest others, the only answer I am able to give is, that it proceeds from the author of our being, who has formed us after this manner, and whom it has pleased that our nature or constitution should be such that the difference of moral good and evil should, in some cases, affect us exactly in the same manner as physical good and evil. It is, therefore, a kind of instinct, like several others that nature has given us, in order to determine us with more expedition and vigor, where reflection would be too slow. It is thus we are informed of our corporeal wants by our inward sense; while our outward senses acquaint us with the quality of the objects that may be useful or prejudicial to us, in order to lead us, as it were, mechanically to whatever is requisite for our preservation. Such is also the instinct that at-

attaches us to life, and the desire of happiness, the *primum mobile* of all our actions. Such is likewise the almost blind but necessary tenderness of parents towards their children. The pressing and indispensable wants of man required that he should be directed by the way of sense, which is always quicker and readier than that of reason. 1

IV. God has, therefore, thought proper to use this method in respect to the moral conduct of man, by imprinting within us a sense or taste of virtue and justice which anticipates, in some measure, our reason, decides our first motions, and happily supplies, in most men, the want of attention or reflection. For what numbers of people would never trouble their heads with reflecting! What multitudes there are of stupid wretches, who lead a mere animal life, and are scarce able to distinguish three or four ideas, in order to form what is called ratiocination! It was, therefore, our particular advantage that the Creator should give us a discernment of good and evil, with a love for the one and an aversion for the other, by means of a quick and lively kind of faculty, which has no necessity to wait for the speculations of the mind.

V. If any one should dispute the reality of these sensations, by saying they are not to be found in all men, because there are savage people, who seem to have none at all, and even among civilized nations we meet with such perverse and stubborn minds, as do not appear to have any notion or sense of virtue, I answer, first, that the most savage people have nevertheless the first ideas above mentioned; and, if there are some who seem to give no outward signs or demonstrations thereof, this is owing to our not being sufficiently acquainted with their manners; or because they are entirely stupified, and have stifled almost all sentiments of humanity; or, in fine, by reason that in some respects they fall into an abuse contrary to those principles, not by rejecting them positively, but through some prejudice that has prevailed over their good sense and natural rectitude, and inclines them to make a bad application of these principles. For example, we see savages who devour their enemies, whom they have made prisoners, imagining it to be the right of war; and, since they have liberty to

kill them, nothing ought to hinder them from benefiting by their flesh, as their proper spoils. But those very savages would not treat in that manner their friends or countrymen. They have laws and rules among themselves; sincerity and plain dealing are esteemed there as in other places, and a grateful heart meets with as much commendation among them as with us.

VI. With regard to those who, in the most enlightened and civilized countries, seem to be void of all shame, humanity or justice, we must take care to distinguish between the natural state of man, and the depravation into which he may fall by abuse, and in consequence of irregularity and debauch. For example, what can be more natural than the paternal tenderness! And yet we have seen men who seemed to have stifled it, through violence of passion, or by force of a present temptation, which suspended for a while this natural affection. What can be stronger than the love of ourselves and of our own preservation? It happens, nevertheless, that, whether through anger or some other motion, which throws the soul out of its natural position, a man tears his own limbs, squanders his substance, or does himself some great prejudice, as if he were bent on his own misery and destruction.

VII. 3. In fine, if there are people who coolly, and without any agitation of mind, seem to have divested themselves of all affection and esteem for virtue, (besides that monsters like these are as rare, I hope, in the moral as in the physical world,) we only see thereby the effects of an exquisite and inveterate depravation. For man is not born thus corrupted; but the interest he has in excusing and palliating his vices, the habit he has contracted, and the sophistical arguments to which he has recourse, may stifle, in fine, or corrupt the moral sense of which we have been speaking; as we see that every other faculty of the soul or body may, by long abuse, be altered or corrupted. The principle is almost always preserved; it is a fire that when it seems to be even extinct, may kindle again and throw out some glimmerings of light, as we have seen examples in very profligate men under particular conjunctures.

VIII. But notwithstanding God has implanted in us this instinct of sense, as the first means of discerning moral good and

Advantages of Reason over Instinct.

evil, yet he has not stopped here; he has also thought proper that the same light which serves to direct us in everything else, that is, reason, should come to our assistance, in order to enable us the better to discern and comprehend the true rules of conduct.

Reason I call the faculty of comparing ideas, of investigating the mutual relations of things, and thence inferring just consequences. This noble faculty, which is the directress of the mind, serves to illustrate, to prove, to extend, and apply what our natural sense already gave us to understand, in relation to justice and injustice. As reflection, instead of diminishing paternal tenderness, tends to strengthen it, by making us observe how agreeable it is to the relation of father and son, to the advantage not only of a family, but of the whole species; in like manner, the natural sense we have of the beauty and excellence of virtue, is considerably improved by the reflections, we are taught by reason, in regard to the foundations, motives, relations, and the general as well as particular uses of this same virtue which seemed so beautiful to us at first sight.

IX. We may even affirm that the light of reason has three advantages in respect to this instinct or sense.

1. It contributes to prove its truth and exactness; in the same manner as we observe in other things, that study and rules serve to verify the exactness of taste, by showing us it is neither blind nor arbitrary, but founded on reason, and directed by principles; or as those who are quick sighted judge with greater certainty of the distance or figure of an object, after having compared, examined and measured it quite at their leisure, than if they had depended entirely on the first sight. We find, likewise, that there are opinions and customs which make so strong and so general an impression on our minds, that to judge of them only by the sentiment they excite, we should be in danger of mistaking prejudice for truth. It is reason's province to rectify this erroneous judgment, and to counter-balance this effect of education, by setting before us the true principles on which we ought to judge of things.

X. 2. A second advantage which reason has in respect to simple instinct is, that it unfolds the ideas better by considering

them in all their relations and consequences. For we frequently see that those who have had only the first notion, find themselves embarrassed and mistaken when they are to apply it to a case of the least delicate or complicated nature. They are sensible indeed of the general principles, but they do not know how to follow them through their different branches, to make the necessary distinctions or exceptions, or to modify them according to time and place. This is the business of reason, which it discharges so much the better in proportion as there is care taken to exercise and improve it.

XI. 3. Reason not only carries its views farther than instinct with respect to the unfolding and application of principles, but has also a more extensive sphere, in regard to the very principles it discovers, and the objects it embraces. For instinct has been given us only for a small number of simple cases, relative to our natural state, and which require a quick determination. But besides those simple cases where it is proper that man should be drawn and determined by a first motion, there are cases of a more composite nature, which arise from the different states of man, from the combination of certain circumstances, and from the particular situation of each person, on all which it is impossible to form any rules but by reflection, and by an attentive observation of the relations and agreements of each thing.

Such are the two faculties with which God has invested us, in order to enable us to discern between good and evil. These faculties, happily joined and subordinate one to another, concur to the same effect. One gives the first notice, the other verifies and proves it; one acquaints us with the principles, the other applies and unfolds them; one serves for a guide in the most pressing and necessary cases, the other distinguishes all sorts of affinity or relation, and lays down rules for the most particular cases.

It is thus we are enabled to discern what is good and just, or, which amounts to the same thing, to know what is the divine will in respect to the moral conduct we are to observe. Let us unite at present these two means, in order to find the principles of the law of nature.

CHAPTER IV.

Of the Principles from which Reason may deduce the Law of Nature.

I. IF we should be afterwards asked what principles ought reason to make use of, in order to judge of what relates to the law of nature, and to deduce and unfold it, our answer is, in general, that we have only to attend to the nature of man, and to his states or relations; and, as these relations are different, there may be likewise different principles that lead us to the knowledge of our duties.

But before we enter upon this point, it will be proper to make some preliminary remarks on what we call *principles of natural law*, in order to prevent the ambiguity or equivocation that has often entangled this subject.

II. 1. When we inquire here which are the first principles of natural law, the question is, which are those truths or primitive rules whereby we may effectually know the divine will in regard to man, and thus arrive, by just consequences, to the knowledge of the particular laws and duties which God imposes on us by right reason?

2. We must not, therefore, confound the principles here in question with the efficient and productive cause of natural laws, or with their obligatory principle. It is unquestionable that the will of the Supreme Being is the efficient cause of the law of nature, and the source of the obligation thence arising. But, this being taken for granted, we have still to inquire how man may attain the knowledge of this will, and to the discovery of those principles, which, acquainting us with the divine intention, enable us to reduce from it all our particular duties, so far as they are discoverable by reason only. A person asks, for example, whether the law of nature requires us to repair injuries, or to be faithful to our engagements? If we are satisfied with answering him that the thing is incontestable, because so it is ordered by the divine will, it is plain that this is not a sufficient answer to his question,

and that he may reasonably insist to have a principle pointed out which should really convince him that such, in the fact, is the will of the Deity; for this is the point he is in search of.

III. Let us afterwards observe that the first principles of natural laws ought to be not only true, but likewise simple, clear, sufficient, and proper for those laws.

They ought to be true; that is, they should be taken from the very nature and state of the thing. False or hypocritical principles must produce consequences of the same nature, for a solid edifice can never be raised on a rotten foundation. They ought to be simple and clear of their own nature, or at least easy to apprehend and unfold. For the laws of nature being obligatory for all mankind, their first principles should be within every body's reach, so that whatsoever has common sense may be easily acquainted with them. It would be very reasonable, therefore, to mistrust principles that are far-fetched, or of too subtle and metaphysical a nature.

I add that these principles ought to be sufficient and universal. They should be such that one may deduce from them, by immediate and natural consequences, all the laws of nature, and the several duties thence resulting; insomuch that the exposition of particulars be properly only an explication of the principles; in the same manner, very nearly as the production or increase of a plant is only an unfolding of the seed.

And, as most natural laws are subject to divers exceptions, it is likewise necessary that the principles be such as include the reasons of the very exception; and that we may not only draw from them all the common rules of morality, but that they also serve to restrain these rules according as place, time and occasion require.

In fine, those first principles ought to be established in such a manner as to be really the proper and direct foundation of all the duties of natural law; insomuch that whether we descend from the principle to deduce the consequences, or whether we ascend from the consequences to the principle, our reasonings require always to be immediately connected, and their thread as though never interrupted.

Nature and Constitution of Man.

IV. But, generally speaking, it is a matter of mere indifference whether we reduce the whole to one single principle, or establish a variety of them. We must consult and follow in this respect a judicious and exact method. All that can be said on this head is, that it is not at all necessary to the solidity or perfection of the system, that all natural laws be deduced from one single and fundamental maxim; nay, perhaps the thing is impossible. Be that as it may, it is idle to endeavor to reduce the whole to this unity.

Such are the general remarks we had to propose. If they prove just, we shall reap this double advantage from them, that they will instruct us in the method we are to follow, in order to establish the true principles of natural law; and at the same time they will enable us to pass a solid judgment on the different systems concerning this subject. But it is time now to come to the point.

V. The only way to attain to the knowledge of natural law is to consider attentively the nature and constitution of man, the relations he has to the beings that surround him, and the states thence resulting. In fact, the very term *natural law*, and the notion we have given of it, show that the principles of this science must be taken from the very nature and constitution of man. We shall, therefore, lay down two general propositions, as the foundation of the whole system of the law of nature.

FIRST PROPOSITION.

Whatever is in the nature and original constitution of man, and appears a necessary consequence of this nature and constitution, certainly indicates the intention or will of God with respect to man, and consequently acquaints us with the law of nature.

SECOND PROPOSITION.

But, in order to have a complete system of the law of nature, we must not only consider the nature of man, such as it is in itself; it is also necessary to attend to the relations he has to other beings, and to different states thence arising. Otherwise, it is evident we should have only an imperfect and defective system.

We may, therefore, affirm that the general foundation of the system of natural law is the nature of man, considered under the

several circumstances that attend it, and in which God himself has placed him for particular ends; inasmuch as by this means we may be acquainted with the will of God. In short, since man holds from the hand of God himself whatever he possesses, as well with regard to his existence as to his manner of existing, it is the study of human nature only that can fully instruct us concerning the views which God proposed to himself in giving us our being, and, consequently, with the rules we ought to follow, in order to accomplish the designs of the Creator.

VI. For this purpose we must recollect what has been already said of the manner in which man may be considered under three different respects or states, which embrace all his particular relations. In the first place, we may consider him as God's creature, from whom he has received his life, his reason, and all the advantages he enjoys. Secondly, man may be considered in himself as a being composed of body and soul, and endowed with many different faculties; as a being that naturally loves himself, and necessarily desires his own felicity. In fine, we may consider him as forming a part of the species, as placed on earth near several other beings of a similar nature, and with whom he is inclined, nay, by his natural condition, obliged to live in society. Such, in fact, is the system of humanity, from which results the most common and natural distinction of our duties, taken from the three different states here mentioned; duties towards God, towards ourselves, and towards the rest of mankind.*

VII. In the first place, since reason brings us acquainted with God, as a self-existent being, and sovereign Lord of all things, and in particular as our creator, preserver, and benefactor, it follows that we ought necessarily to acknowledge the sovereign perfection of this Supreme Being, and our absolute dependence on him; which, by a natural consequence, inspires us with sentiments of respect, love and fear, and with an entire submission to his will. For why should God have thus manifested himself to mankind, were it not

* We meet with this division in Cicero. Philosophy, says he, teaches us in the first place the worship of the Deity; secondly, the mutual duties of men, founded on human society, and, in fine, moderation and greatness of soul.

Religion.

that their reason should teach them to entertain sentiments proportioned to the excellence of his nature, that is, they should honor, love, adore and obey him?

VIII. Infinite respect is the natural consequence of the impressions we receive from a prospect of all the divine perfections. We cannot refuse love and gratitude to a being supremely beneficent. The fear of displeasing or offending him is a natural effect of the idea we entertain of his justice and power, and obedience cannot but follow from the knowledge of his legitimate authority over us, of his bounty and supreme wisdom, which are sure to conduct us by the road most agreeable to our nature and happiness. The assemblage of these sentiments, deeply engraved in the heart, is called *piety*.

Piety, if it be real, will show itself externally two different ways; by our morals, and by outward worship. I say, first, by *our morals*, because a pious man, sincerely penetrated with the above mentioned sentiments, will find himself naturally inclined to speak and act after the manner he knows to be most conformable to the divine will and perfections. This is his rule and model, from which the practice of the most excellent virtues arises.

2. But besides this manner of honoring God, which is undoubtedly the most necessary and most real, a religious man will consider it as a pleasure and duty to strengthen himself in these sentiments of piety, and to excite them in others. Hence external worship, as well public as private, is derived. For, whether we consider this worship as the first and almost only means of exciting, entertaining, and improving religious and pious sentiments in the mind; or whether we look upon it as a homage which men, united by particular or private societies, pay in common to the Deity; or whether, in fine, both these views are joined, reason represents it to us as a duty of indispensable necessity.

This worship may vary, indeed, in regard to its form, yet there is a natural principle which determines its essence and preserves it from all frivolous and superstitious practices, viz: that it consists in instructing mankind, in rendering them pious and virtuous,

and in giving them just ideas of the nature of God, as also what he requires from his creatures.

The different duties here pointed out, constitute what we distinguish by the name of *religion*. We may define it a connection which attaches man to God and to the observance of his laws by those sentiments of respect, love, submission and fear, which the perfections of a Supreme Being, and our entire dependence on him as an all-wise and all-bountiful Creator, are apt to excite in the human mind.

Thus by studying our nature and state, we find in the relation we have to the Deity, the proper principle from which those duties of natural law, that have God for their object, are immediately derived.

IX. If we search afterwards for the principle of those duties that regard ourselves, it will be easy to discover them by examining the internal condition of man, and inquiring into the Creator's views in regard to him, in order to know for what end he has endowed him with those faculties of mind and body that constitute his nature.

Now it is evident that God, by creating us, proposed our preservation, perfection and happiness. This is what manifestly appears, as well by the faculties with which man is invested, which all tend to the same end, as by the strong inclination that prompts us to pursue good and shun evil. God is, therefore, willing that every one should labor for his own preservation and perfection, in order to acquire all the happiness of which he is capable, according to his nature and state.

This being premised, we may affirm that self-love (I mean an enlightened and rational love of ourselves) may serve for the first principle with regard to the duties which concern man himself; inasmuch as this sensation, being inseparable from human nature, and having God for its author, gives us clearly to understand in this respect the will of the Supreme Being.

Yet we should take particular notice that the love of ourselves cannot serve us as a principle and rule, but inasmuch as it is

Natural Laws derived from this Principle.

directed by right reason, according to the exigencies or necessities of our nature and state.

For thus it only becomes an interpreter of the Creator's will in respect to us; that is, it ought to be managed in such a manner as not to offend the laws of religion or society. Otherwise this self-love would become the source of a thousand iniquities; and, so far from being of any service, would prove a snare to us by the prejudice we should certainly receive from those very iniquities.

X. From this principle, thus established, it is easy to deduce the natural laws and duties that directly concern us. The desire of happiness is attended, in the first place, with the care of our preservation. It requires next, that (everything else being equal) the care of the soul should be preferred to that of the body. We ought not to neglect to improve our reason, by learning to discern truth from falsehood, the useful from the hurtful, in order to acquire a just knowledge of things that concern us, and to form a right judgment of them. It is in this that the perfection of the understanding, or wisdom, consists: We should afterwards be determined, and act constantly according to this light, in spite of all contrary suggestion and passion. For it is properly this vigor or perseverance of the soul, in following the counsels of wisdom, that constitutes virtue, and forms the perfection of the will, without which the light of the understanding would be of no manner of use.

From this principle all the particular rules arise. You ask, for example, whether the moderation of the passions be a duty imposed upon us by the law of nature? In order to give you an answer, I inquire, in my turn, whether it is necessary to our preservation, perfection and happiness? If it be, as undoubtedly it is, the question is decided. You have a mind to know whether the love of occupation, the discerning between permitted and forbidden pleasures, and moderation in the use of such as are permitted, whether, in fine, patience, constancy, resolution, &c., are natural duties; I shall always answer by making use of the same principle; and, provided I apply it well, my answer cannot but be right and exact; because the principle conducts me certainly to the end by acquainting me with the will of God.

XI. There remains still another point to investigate, namely, the principle from which we are to deduce those natural laws that regard our mutual duties, and have society for their object. Let us see whether we cannot discover this principle by pursuing the same method. We ought always to consult the actual state of things in order to take their result.

I am not the only person upon earth; I find myself in the middle of an infinite number of other men, who resemble me in every respect; and I am subject to this state, even from my nativity, by the very act of Providence. This induces me, naturally, to think it was not the intention of God that each man should live single and separate from the rest; but that, on the contrary, it was his will they should live together and be joined in society. The Creator might certainly have formed all men at the same time, though separated from one another, by investing each of them with the proper and sufficient qualities for this kind of solitary life. If he has not followed this plan, it is probably because it was his will that the ties of consanguinity and birth should begin to form a more extensive union which he was pleased to establish amongst men.

The more I examine, the more I am confirmed in this thought. Most of the faculties of man, his natural inclinations, his weakness and wants, are all so many indubitable proofs of this intention of the Creator.

XII. Such in effect is the nature and constitution of man, that out of society he could neither preserve his life, nor display and perfect his faculties and talents, nor attain any real and solid happiness. What would become of an infant, were there not some benevolent and assisting hand to provide for his wants? He must perish, if no one takes care of him; and this state of weakness and ignorance requires even a long and continued assistance. View him when grown up to manhood: you find nothing but rudeness, ignorance and confused ideas, which he is scarcely able to convey; abandon him to himself, and you behold a savage, and perhaps a ferocious animal; ignorant of all the conveniences of life, sunk in idleness, a prey to spleen and melancholy, and almost incapable

Society Necessary for Man.

of providing against the first wants of nature. If he attains to old age, behold him relapsed into infirmities, that render him almost as dependent on external aid as he was in his infancy. This dependence shows itself in a more sensible manner in accidents and maladies. What would then become of man, were he to be in a state of solitude? There is nothing but the assistance of our fellow creatures that is able to preserve us from the divers evils, or to redress them and render us easy and happy, in whatsoever stage or situation of life.

We have an excellent picture of the use of society, drawn by Seneca. *On what, says he, does our security depend, but on the services we render one another? It is this commerce of benefits that makes life easy, and enables us to defend ourselves against any sudden insults or attacks. What would be the fate of mankind were every one to live apart? so many men, so many victims to other animals, an easy prey, in short, feebleness itself. In fact, other animals have strength enough sufficient to defend themselves. Those that are wild and wandering, and whose ferocity does not permit them to herd together, are born, as it were, with arms; whereas man is on all sides encompassed with weakness, having neither arms nor teeth nor claws to render him formidable. But the strength he wants by himself, he finds when united with his equals.*

Nature, to make amends, has endowed him with two things which give him a considerable force and superiority, where otherwise he would be much inferior; I mean, reason and sociability, whereby he who alone could make no resistance, becomes master of the whole. Society gives him an empire over other animals; society is the cause that not satisfied with the element on which he was born, he extends his command over the sea. It is this same union that supplies him with remedies in his diseases, assistance in his old age, and comfort in his pains and anxieties; it is this that enables him, as it were, to bid defiance to fortune. Take away society, and you destroy the union of mankind, on which the preservation and the whole happiness of life depends.

XIII. As society is so necessary to man, God has therefore given him a constitution, faculties, and talents that render him very proper for this state. Such is, for example, the faculty of speech, which enables us to convey our thoughts with facility and readiness, and would be of no manner of use out of society. The same may be said with regard to our propensity to imitation, and of that surprising mechanism which renders all the passions and impressions of the soul so easy to be communicated. It is sufficient a man appears to be moved, in order to move and soften others. If a person accosts us with joy painted on his countenance, he excites in us the like sentiment of joy. The tears of a stranger affect us, even before we know the cause thereof; and the cries of a man related to us only by the common tie of humanity make us fly to his succor by a mechanical movement previous to all deliberation.

This is not all. We see that nature has thought proper to distribute differently her talents among men, by giving to some an aptitude to perform certain things, which to others are impossible; while the latter have received, in their turn, an industry denied to the former. Wherefore, if the natural wants of men render them dependent on one another, the diversity of talents which qualifies them for mutual aid connects and unites them. These are so many evident signs of man's being designed for society.

XIV. But, if we consult our own inclinations, we shall likewise find that our hearts are naturally bent to wish for the company of our equal, and to dread an entire solitude, as an irksome and forlorn state. And though there have been instances of people who have thrown themselves into a solitary life, yet we cannot consider this in any other light but as the effect of superstition, or melancholy, or of a singularity extremely remote from the state of nature. Were we to investigate the cause of this social inclination, we should find it is wisely bestowed on us by the Author of our being; by reason that it is in society man finds a remedy for the greatest part of his wants, and an occasion for exercising most of his faculties; it is in society he is capable of feeling and displaying those sensations on which nature has entailed so much satisfaction and pleasure; I mean the sensations

Sociability.

of benevolence; friendship, compassion and generosity. For such are the charms of social affections, that from them our purest enjoyments arise. Nothing, in fact, is so satisfactory and flattering to man as to think he merits the esteem and friendship of others. Science acquires an additional value, when it can display itself abroad; and our joy becomes more sensible when we have an opportunity of testifying it in public, or of pouring it into the bosom of a friend. It is redoubled by being communicated; for our own satisfaction is increased by the agreeable idea we have of giving pleasure to our friends, and of fixing them more steadily in our interest. Anxiety, on the contrary, is alleviated and softened by sharing it with our neighbor; just as a burden is eased when a good natured person helps us to bear it.

Thus every thing invites us to the state of society; want renders it necessary to us, inclination makes it a pleasure, and the dispositions we naturally have for it are a sufficient indication of its being really intended by our Creator.

XV. But, as human society can neither subsist nor produce the happy effects for which God has established it, unless mankind have sentiments of affection and benevolence for one another, it follows that our Creator and common Father is willing that every body should be animated with these sentiments, and do whatever lies in their power to maintain this society in an agreeable and advantageous state, and to tie the knot still closer by reciprocal services and benefits.

This is the true principal of the duties which the law of nature prescribes to us in respect to other men. Ethical writers have given it the name of *sociability*, by which they understand that disposition which inclines us to benevolence to our fellow creatures, to do them all the good that lies in our power, to reconcile our own happiness to that of others, and to render our particular advantage subordinate to the common and general good.

The more we study our own nature, the more we are convinced that this sociability is really agreeable to the will of God. For, beside the necessity of this principle, we find it engraved in our

heart; where, if the Creator has implanted on one side the love of ourselves, the same hand has imprinted on the other a sentiment of benevolence for our fellow creatures. These two inclinations, though distinct from one another, have nothing opposite in their nature; and God, who has bestowed them upon us, designed they should act in concert, in order to help and not to destroy each other. Hence good natured and generous hearts feel a most sensible satisfaction in doing good to mankind, because in this they follow the inclination they received from nature.

XVI. From the principle of sociability, as from their real source, all the laws of society, and all our general and particular duties toward other men, are derived.

1. This union, which God has established among men, requires that, in everything relating to society, the public good should be the supreme rule of their conduct, and that, guided by the counsels of prudence, they should never pursue their private advantage to the prejudice of the public; for this is what their state demands, and is, consequently, the will of their common Father.

2. The spirit of sociability ought to be universal. Human society embraces all those with whom we can have possibly any communication; because it is founded on the relations they all bear to one another, in consequence of their nature and state.

3. Reason afterwards informs us, that creatures of the same rank and species, born with the same faculties to live in society, and to partake of the same advantages, have, in general, an equal and common right. We are, therefore, obliged to consider ourselves as naturally equal, and to behave as such; and it would be bidding defiance to nature not to acknowledge this principle of equity (which, by the civilians, is called *æquabilitas juris*) as one of the first foundations of society. It is on this the *lex talionis* is founded, as also that simple but universal and useful rule, that we ought to have the same dispositions in regard to other men, as we desire they should have toward us, and to behave in the

Particular Consequences.

same manner toward them, as we are willing they should behave to us, in the like circumstances.

4. Sociability being a reciprocal obligation among men, such as, through malice or injustice, break the band of society, cannot reasonably complain, if those they have injured do not treat them as friends, or even if they proceed against them by forcible methods.

But, though we have a right to suspend the acts of benevolence in regard to an enemy, yet we are never allowed to stifle its principle. As nothing but necessity can authorize us to have recourse to force against an unjust aggressor, so this same necessity should be the rule and measure of the harm we do him; and we ought to be always disposed to reconciliation so soon as he has done us justice, and we have nothing farther to apprehend.

We must, therefore, distinguish carefully between a just defense of one's own person and revenge. The first does but suspend, through necessity and for a while, the exercise of benevolence, and has nothing in it opposite to sociability. But the other, stifling the very principle of benevolence, introduces in its stead a sentiment of hatred and animosity; a sentiment vicious in itself, contrary to the public good, and expressly condemned by the law of nature.

XVII. These general rules are very fertile of consequences.

We should do no wrong to any one, either in word or action; and we ought to repair all damages by us committed: for society could not subsist were acts of injustice tolerated.

We ought to be sincere in our discourse, and steady in our engagements; for what trust could men repose in one another, and what security could they have in commercial life, were it lawful to violate their plighted faith?

We not only ought to do every man the good he properly deserves, but, moreover, we should pay him the degree of esteem and honor due to him, according to his estate and rank; because subordination is the link of society, without which there can be no order either in families, or in civil governments.

But if the public good requires that inferiors should obey, it demands, also, that superiors should preserve the rights of those who are subject to them, and should govern their people only in order to render them happy.

Again: men are captivated by the heart and by favors; now, nothing is more agreeable to humanity, or more useful to society, than compassion, lenity, beneficence and generosity. This is what induced Cicero to say, *there is nothing truer than that excellent maxim of Plato — viz: that we are not born for ourselves alone, but likewise for our country and friends; and if, according to the Stoics, the productions of the earth are for men, and men themselves for the good and assistance of one another, we ought certainly, in this respect, to comply with the design of nature, and promote her intention by contributing our share to the general interest, by mutually giving and receiving good turns, and employing all our care and industry, and even our substance, to strengthen that love and friendship which should always prevail in human society.*

Since, therefore, the different sentiments and acts of justice and goodness are the only and true bonds that knit men together, and are capable of contributing to the stability, peace and prosperity of society, we must look upon those virtues as so many duties that God imposes on us; for this reason, because whatever is necessary to his design is, of course, conformable to his will.

XVIII. We have, therefore, three general principles of the laws of nature relative to the above-mentioned three states of man. And these are, 1. Religion. 2. Self-love. 3. Sociability, or benevolence toward our fellow creatures.

These principles have all the characters above required. They are *true*, because they are taken from the nature of man, in the constitution and state in which God has placed him. They are *simple*, and within every body's reach, which is an important point; because, in regard to duties, there is nothing wanting but principles that are obvious to every one: for a subtlety of mind, that sets upon singular and new ways, is always dangerous. In fine, these principles are *sufficient* and very *fertile*: by reason

Puffendorf's System.

they embrace all the objects of our duties, and acquaint us with the will of God in the several states and relations of man.

XIX. True it is, that Puffendorf reduces the thing within a less compass, by establishing sociability alone as the foundation of all natural laws. But it has been justly observed that this method is defective. For the principle of sociability does not furnish us with the proper and direct foundation of all our duties. Those which have God for their object, and those which are relative to man himself, do not flow directly and immediately from this source, but have their proper and particular principle. Let us suppose man in solitude: he would still have several duties to discharge, such as to love and honor God, to preserve himself, to cultivate his faculties as much as possible, &c. I acknowledge that the principle of sociability is the most extensive, and that the other two have a natural connection with it; yet we ought not to confound them, as if they had not their own particular force, independent of sociability. These are three different springs which give motion and action to the system of humanity; springs distinct from one another, but which act all at the same time, pursuant to the views of the Creator.

XX. Be it said, nevertheless, in justification of Puffendorf, and according to a judicious observation made by Barbeyrac, that most of the criticisms on the former's system, as defective in its principle, have been pushed too far. This illustrious restorer of the study of natural law, declares his design was properly no more than to explain the natural duties of man. Now, for this purpose, he had occasion only for the principle of sociability. According to him, our duty towards God forms a part of natural theology; and religion is interwoven in a treatise of natural law, only as it is a firm support of society. With regard to the duties that concern man himself, he makes them depend partly on religion, and partly on sociability. Such is Puffendorf's system: he would certainly have made his work more perfect, if, embracing all the states of man, he had established distinctly the proper principles agreeable to each of those states, in order to deduce

afterwards from them all our particular duties. For such is the just extent we ought to give to natural law.

XXI. This was so much the more necessary, as notwithstanding our duties are relative to different objects, and deduced from distinct principles, yet they have, as we already hinted, a natural connection; insomuch that they are interwoven, as it were, with one another, and by mutual assistance the observance of some renders the practice of others more easy and certain. It is certain, for example, that the fear of God, joined to perfect submission to his will, is a very efficacious motive to engage men to discharge what directly concerns themselves, and to do for their neighbor and for society whatever the law of nature requires. It is also certain, that the duties which relate to ourselves, contribute not a little to direct us with respect to other men. For what good could society expect from a man who would take no care to improve his reason, or to form his mind and heart to wisdom and virtue? On the contrary, what may we not promise ourselves from those who spare no pains to perfect their faculties and talents, and are pushed on toward this noble end, either by the desire of rendering themselves happy, or by that of procuring the happiness of others? Thus whosoever neglects his duty toward God, and deviates from the rules of virtue in what concerns himself, commits thereby an injustice in respect to other men, because he subtracts so much from the common happiness. On the contrary, a person who is penetrated with such sentiments of piety, justice, and benevolence, as religion and sociability require, endeavors to make himself happy; because, according to the plan of Providence, the personal felicity of every man is inseparably connected on the one side with religion, and on the other with the general happiness of the society of which he is a member; insomuch that to take a particular road to happiness is mistaking the thing, and rambling out of the way. Such is the admirable harmony which the divine wisdom has established between the different parts of the human system. What could be wanting to complete the happiness of man, were he always attentive to such salutary direction!

Opposition of Duties.

XXII. But as the three grand principles of our duties are thus connected, so there is likewise a natural subordination between them, that helps to decide which of those duties ought to have the preference in particular circumstances or cases, when they have a kind of conflict or opposition that does not permit us to discharge them all alike.

The general principle to judge rightly of this subordination is, that the stronger obligation ought always to prevail over the weaker. But to know afterwards which is the stronger obligation, we have only to attend to the very nature of our duties, and their different degrees of necessity and utility; for this is the right way to know in that case the will of God. Pursuant to these ideas, we shall give here some general rules concerning the cases above mentioned.

1. The duties of man toward God should always prevail over any other. For all obligations, that which binds us to our all-wise and all-bountiful Creator, is, without doubt, the nearest and strongest.

2. If what we owe to ourselves comes in competition with our duty to society in general, society ought to have the preference. Otherwise we should invert the order of things, destroy the foundations of society, and act directly contrary to the will of God, who, by subordinating the part to the whole, has laid us under an indispensable obligation of never deviating from the supreme law of the common good.

3. But if, every thing else equal, there happens to be an opposition between the duties of self-love and sociability, self-love ought to prevail. For, man being directly and primarily charged with the care of his own preservation and happiness, it follows, therefore, that, in a case of entire inequality, the care of ourselves ought to prevail over that of others.

4. But if, in fine, the opposition is between duties relating to ourselves, or between two duties of sociability, we ought to prefer that which is accompanied with the greatest utility, as being the most important.

XXIII. What we have hitherto explained properly regards the natural law called *obligatory*—viz: that which, having for its object those actions wherein we discover a necessary agreeableness or disagreeableness to the nature and state of man, lays us under an indispensable obligation of acting or not acting after a particular manner. But, in consequence of what has been said above,* we must acknowledge that there is likewise a law of *simple permission*, which leaves us at liberty in particular cases to act or not, and, by laying other men under a necessity of giving us no let nor molestation, secures to us in this respect the exercise and effect of our liberty.

The general principle of this law of permission is, that we may reasonably, and according as we judge proper, do or omit whatever has not an absolute and essential agreeableness or disagreeableness to the nature and state of man; unless it be a thing expressly ordained or forbidden by some positive law, to which we are otherwise subject.

The truth of this principle is obvious. The Creator having invested man with several faculties, and, among the rest, with that of modifying his actions, as he thinks proper, it is plain that in every thing, in which he has not restrained the use of those faculties, either by an express command or a positive prohibition, he leaves man at liberty to exercise them according to his own discretion. It is on this law of permission all those rights are founded, which are of such a nature as to leave us at liberty to use them or not, to retain or renounce them in the whole or in part; and, in consequence of this renunciation, actions, in themselves permitted, happen sometimes to be commanded or forbidden by the authority of the sovereign, and become obligatory by that means.

XXIV. This is what right reason discovers in the nature and constitution of man, in his original and primitive state. But as man himself may make divers modifications in his primitive state, and enter into several adventitious ones, the consideration of those

* See part i, chap. 1, secs. 5 and 6.

Natural Law, Primary and Secondary.

new states fall likewise within the object of the law of nature, taken in its full extent; and the principles we have laid down, ought to serve likewise for a rule in the states, in which man engages by his own act and deed.

Hence occasion has been taken to distinguish two species of natural law: the one primary, the other secondary.

The primary or primitive natural law is that which immediately arises from the primitive constitution of man, as God himself has established it, independent of any human act.

Secondary natural law is that which supposes some human act or establishment, as a civil state, property of goods, &c.

It is easy to comprehend that this secondary natural law is only a consequence of the former; or, rather, it is a just application of the general maxims of natural law to the particular states of mankind, and to the different circumstances in which they find themselves by their own act; as it appears, in fact, when we come to examine into particular duties.

Some, perhaps, will be surprised, that, in establishing the principles of natural law, we have taken no notice of the different opinions of writers concerning this subject. But we judged it more advisable to point out the true sources from which the principles were to be drawn, and to establish afterwards the principles themselves, than to enter into a discussion, which would have carried us too far for a work of this nature. If we have hit upon the true one, this will be sufficient to enable us to judge of all the rest; and if any one desires a more ample and more particular instruction, he may easily find it by consulting Puffendorf, who relates the different opinions of civilians, and accompanies them with very judicious reflections.

CHAPTER V.

That Natural Laws have been sufficiently notified—of their proper Characteristics—the Obligations they produce, &c.

I. AFTER what has been hitherto said, in relation to the principles of natural law, and the way we come to know them, there is no need to ask, whether God has sufficiently notified those laws to man. It is evident we can discover all their principles, and deduce from them our several duties, by that natural light which to no man has been ever refused. It is in this sense we are to understand what is commonly said, that this law is naturally known to all mankind. For, to think with some people, that the law of nature is innate, as it were, in our minds, and actually imprinted in our souls from the first moment of our existence, is supposing a thing that is not at all necessary, and is, moreover, contradicted by experience. All that can be said on this subject is, that the most general and most important maxims of the law of nature are so clear and manifest, and have such a proportion to our ideas, and such an agreeableness to our nature, that so soon as they are proposed to us we instantly approve of them; and as we are disposed and accustomed from our infancy to feel these truths, we consider them as born with us.

II. But we must take care to observe, that, when we say man may acquire the knowledge of natural laws by using his reason, we do not exclude the succors he may receive elsewhere. Some there are, who, having taken a particular care to cultivate their minds, are qualified to enlighten others, and to supply, by their instructions, the rudeness and ignorance of the common run of mankind. This is agreeable to the plan of Providence. God having designed man for society, and given him a constitution relative to this end, the different helps which men receive of one another, ought to be equally ranked among natural means with those which every one finds within himself, and draws from his own fund.

Natural Law, the Effect of Divine Goodness.

In effect, all men are not of themselves capable of unfolding methodically the principles of natural law, and the consequences thence resulting. It is sufficient, that middling capacities are able to comprehend, at least, those principles, when they are explained to them, and to feel the truth and necessity of the duties that flow from them, by comparing them with the constitution of their own nature. But if there be some capacities of a still inferior order, they are generally led by the impressions of example, custom, authority, or some present and sensible utility. Be this as it will, every thing rightly considered, the law of nature is sufficiently notified to empower us to affirm, that no man, at the age of discretion, and in his right senses, can allege for a just excuse an invincible ignorance on this article.

III. Let us make a reflection, which presents itself here very naturally. It is, that whosoever attends seriously to the manner in which we have established the principles of the laws of nature, will soon find that the method we have followed is a fresh proof of the certainty and reality of those laws. We have waived all abstract and metaphysical speculations, in order to consult plain fact, and the nature and state of things. It is from the natural constitution of man, and from the relations he has to other beings, that we have taken our principles; and the system thence resulting has so strict and so necessary a connection with this nature and state of man, that they are absolutely inseparable. If, to all this, we join what has been already observed in the foregoing chapters, we cannot, methinks, mistake the laws of nature, or doubt of their reality, without renouncing the purest light of reason, and running into Pyrrhonism.

IV. But as the principles of the laws of nature are, through the wisdom of the Creator, easy to discover, and as the knowledge of the duties they impose on us is within the reach of the most ordinary capacities, it is also certain that these laws are far from being impracticable. On the contrary, they bear so manifest a proportion to the light of right reason, and to our most natural inclinations—they have also such a relation to our perfection and happiness—that they cannot be considered otherwise than as an

effect of the divine goodness toward men. Since no other motive but that of doing good could ever induce a being, who is self-existent and supremely happy, to form creatures endowed with understanding and sense, it must have been, in consequence of this same goodness, that he first vouchsafed to direct them by laws. His view was not merely to restrain their liberty, but he thought fit to let them know what agreed with them best—what was most proper for their perfection and happiness; and in order to add greater weight to the reasonable motives that were to determine them, he joined thereto the authority of his commands.*

This gives us to understand why the laws of nature are such as they are. It was necessary, pursuant to the views of the Almighty, that the laws he prescribed to mankind should be suitable to their nature and state; that they should have a tendency of themselves to procure the perfection and advantage of individuals, as well as of the species; of particular people, as well as of the society. In short, the choice of the end determined the nature of the means.

V. In fact, there are natural and necessary differences in human actions, and in the effects by them produced. Some agree of themselves with the nature and state of man, while others disagree and are quite opposite thereto; some contribute to the production and maintenance of order, others tend to subvert it; some procure the perfection and happiness of mankind, others are attended with their disgrace and misery. To refuse to acknowledge these differences, would be shutting one's eyes to the light and confounding it with darkness. These are differences of a most sensible nature; and, whatever a person may say to the contrary, sense and experience will always refute those false and idle subtleties.

Let us not, therefore, seek anywhere else but in the very nature of human actions, in their essential differences and consequences, for the true foundation of the laws of nature, and why God forbids some things while he commands others. These are not arbi-

* See part i. chap. x, sect. 3.

Opinions of Grotius.

trary laws, such as God might not have given, or have given others of a quite different nature. Supreme wisdom can, no more than supreme power, act any thing absurd and contradictory. It is the very nature of things that always serves for the rule of his determinations. God was at liberty, without doubt, to create or not to create man; to create him such as he is or to give him a quite different nature. But, having determined to form a rational and social being, he could not prescribe any thing unsuitable to such a creature. We may even affirm that the supposition which makes the principles and rules of the law of nature depend on the arbitrary will of God, tends to subvert and destroy even the very idea of natural law. For, if these laws were not a necessary consequence of the nature, constitution, and state of man, it would be impossible for us to have a certain knowledge of them, except by a very clear revelation, or by some other formal promulgation on the part of God. But agreed it is, that the law of nature is, and ought to be, known by the mere light of reason. To conceive it, therefore, as depending on an arbitrary will, would be attempting to subvert it, or at least would be reducing the thing to a kind of Pyrrhonism; by reason we could have no natural means of being sure that God commands or forbids one thing rather than another. Hence, if the laws of nature depend originally on divine institution; as there is no room to question, we must likewise agree that this is not a mere arbitrary institution, but founded, on the one side, on the very nature and constitution of man, and, on the other, on the wisdom of God, who cannot desire an end without desiring at the same time the means that alone are fit to obtain it.

VI. It is not amiss to observe here, that the manner in which we establish the foundation of the law of nature, does not differ in the main from the principles of Grotius. Perhaps this great man might have explained his thoughts a little better. But we must own that his commentators, without excepting Puffendorf himself, have not rightly understood his meaning, and, consequently, have passed a wrong censure on him, by pretending that the manner in which he established the foundation of the law of

nature is reduced to a vicious circle. *If we ask, says Puffendorf, which are those things that form the matter of natural laws, the answer is, that they are those which are honest or dishonest of their own nature. If we inquire afterwards, what are those things that are honest or dishonest of their own nature, there can be no other answer given, but that they are those which form the matter of natural laws. This is what the critics put into the mouth of Grotius.*

But let us see whether Grotius says really any such thing. *The law of nature, says he, consists in certain principles of right reason, which inform us that an action is morally honest or dishonest, according to the necessary agreeableness or disagreeableness it has with a rational and social nature; and, consequently, that God, who is the author of nature, commands or forbids such actions.* Here I can see no circle; for, putting the question, whence comes the natural honesty or turpitude of commanded or forbidden actions? Grotius does not answer in the manner they make him; on the contrary, he says that this honesty or turpitude proceeds from the necessary agreeableness or disagreeableness of our actions with a rational and social nature.

VII. After having seen that the laws of nature are practicable of themselves, evidently useful, highly conformable to the ideas which right reason gives us of God, suitable to the nature and state of man, perfectly agreeable to order, and, in fine, sufficiently notified, there is no longer room to question that laws, invested with all these characteristics, are obligatory, and lay men under an indispensable obligation of conforming their conduct to them. It is even certain that the obligation which God imposes on us by this mean, is the strongest of all, by reason of its being produced by the concurrence and union of the strongest motives, such as are most proper to determine the will. In fact, the counsels and maxims of reason oblige us, not only because they are in themselves very agreeable, and founded on the nature and immutable relation of things, but, moreover, by the authority of the Supreme Being, who intervenes here, by giving us clearly to

Natural Law Obligatory on all Men.

understand he is willing we should observe them, because of his being the author of this nature of things, and of the mutual relation they have among themselves. In fine, the law of nature binds us by an internal and external obligation at the same time, which produces the highest degree of moral necessity, and reduces liberty to the very strongest subjection, without destroying it.*

Thus the obedience due to natural law, is a sincere obedience, and such as ought to arise from a conscientious principle. The first effect of those laws is to direct the sentiments of our minds and the motions of the heart. We should not discharge what they require of us, were we externally to abstain from what they condemn, but with regret and against our will. And as it is not allowable to desire what we are not permitted to enjoy, so it is our duty not only to practice what we are commanded, but likewise to give it our approbation, and to acknowledge its utility and justice.

VIII. Another essential characteristic of the laws of nature is, that they be universal, that is, they should oblige all men without exception. For men are not only equally subject to God's command, but, moreover, the laws of nature having their foundation in the constitution and state of man, and being notified to him by reason, it is plain they have an essential agreeableness to all mankind, and oblige them without distinction, whatever difference there may be between them in fact, and in whatever state they are supposed. This is what distinguishes natural from positive laws; for a positive law relates only to particular persons or societies.

IX. It is true that Grotius, and after him several divines and civilians, pretend that there are divine, positive, and universal laws, which oblige all men, from the very moment they are made sufficiently known to them. But, in the first place, were there any such laws, as they could not be discovered by the sole light of reason, they must have been very clearly manifested to all

*See part i. chap. vi. sec. 13.

mankind ; a thing which cannot be fully proved ; and if it should be said that they oblige only those to whom they are made known, this destroys the idea of universality attributed to them, by supposing that those laws were made for all men. Secondly, the divine, positive, and universal laws ought to be, moreover, of themselves beneficial to all mankind, at all times and in all places ; and this the wisdom and goodness of God require. But for this purpose these laws should have been founded on the constitution of human nature in general, and then they would be true natural laws.

X. We have already observed that the laws of nature, though established by the divine will, are not the effect of an arbitrary disposition, but have their foundation in the very nature and mutual relations of things. Hence it follows that natural laws are immutable, and admit of no dispensation. This is also a proper characteristic of these laws, which distinguishes them from all positive laws, whether divine or human.

This immutability of the laws of nature has nothing in it repugnant to the independence, supreme power, or liberty of an all-perfect Being. Since he himself is the author of our constitution, he cannot but prescribe or prohibit such things as have a necessary agreeableness or disagreeableness to this very constitution ; and, consequently, he cannot make any change or give any dispensation in regard to the laws of nature. It is a glorious necessity in him not to contradict himself ; it is a kind of impotency, falsely so called, which, far from limiting or diminishing his perfections, adds to their external character, and points out all their excellency.

XI. Considering the thing, as has been now explained, we may say, if we will, that the laws of nature are eternal ; though, to tell the truth, this expression is very incorrect of itself, and more adapted to throw obscurity than clearness upon our ideas. Those who first took notice of the eternity of the laws of nature, did it very probably out of opposition to the novelty and frequent mutations of civil laws. They meant only that the law of nature is antecedent, for example, to the laws of Moses, of Solon, or of

The Laws of Nature Eternal.

any other legislator, in that it is coëval with mankind ; and so far they were in the right. But to affirm, as a great many divines and moralists have done, that the law of nature is coëternal with God, is advancing a proposition which, reduced to its just value, is not exactly true ; by reason that, the law of nature being made for man, its actual existence supposeth that of mankind. But if we are only to understand hereby that God had the ideas thereof from all eternity, then we attribute nothing to the laws of nature but what is equally common to everything that exists.

We cannot finish this article better than with a beautiful passage of Cicero, preserved by Lactantius. *Right reason, says this philosopher, is indeed a true law, agreeable to nature, common to all men, constant, immutable, eternal. It prompts men to their duty by its commands, and deters them from evil by its prohibitions. It is not allowed to retrench any part of this law, nor to make any alterations therein, much less to abolish it entirely. Neither the senate nor people can dispense with it ; nor does it require any interpretation, being clear of itself and intelligible. It is the same at Rome and Athens ; the same to-day and to-morrow. It is the same eternal and invariable law, given at all times and places to all nations ; because God, who is the author thereof, and has published it himself, is always the sole master and sovereign of mankind. Whosoever violates this law renounces his own nature, divests himself of humanity, and will be rigorously chastised for his disobedience, though he were to escape what is commonly distinguished by the name of punishment.*

But let this suffice in regard to the law of nature, considered as a rule to individuals. In order to embrace the entire system of man, and to unfold our principles in their full extent, it is necessary we say something likewise concerning the rules which nations ought to observe between each other, and are commonly called *the law of nations*.

CHAPTER VI.

Of the Law of Nations.

I. AMONG the various establishments of man, the most considerable, without doubt, is that of civil society, or the body politic, which is justly esteemed the most perfect of societies, and has obtained the name of *state* by way of preference.

Human society is simply of itself, and with regard to those who compose it, a state of equality and independence. It is subject to God alone; no one has a natural and primitive right to command; but each person may dispose of himself, and of what he possess, as he thinks proper, with this only restriction, that he keep within the bounds of the law of nature, and do no prejudice or injury to any man.

The civil state makes a great alteration in this primitive one. The establishing a sovereignty subverts this independence, wherein men were originally with regard to one another, and subordination is substituted in its stead.

II. But how great soever the change may be, which government and sovereignty make in the state of nature, yet we must not imagine that the civil state properly subverts all natural society, or that it destroys the essential relations which men have among themselves, or those between God and man. This would be neither physically nor morally possible; on the contrary, the civil state supposes the nature of man such as the Creator has formed it; it supposes the primitive state of union and society, with all the relations this state includes; it supposes, in fine, the natural dependence of man with regard to God and his laws. Government is so far from subverting this first order, that it has been rather established with a view to give it a new degree of force and consistency. It was intended to enable us the better to discharge the duties prescribed by natural laws, and to attain more certainly the end for which we were created.

III. In order to form a just idea of civil society, we must say,

that it is no more than natural society itself modified in such a manner as to have a sovereign that commands, and on whose will whatever concerns the happiness of society ultimately depends; to the end that under his protection and through his care, mankind may surely attain the felicity to which they naturally aspire.

IV. All societies are formed by the concurrence or union of the wills of several persons, with a view of acquiring some advantage. Hence it is that societies are considered as bodies, and receive the appellation of moral persons; by reason that those bodies are in effect animated with one sole will, which regulates all their movements. This agrees particularly with the body politic or state. The sovereign is the chief or head, and the subjects the members; all their actions, that have any relation to society, are directed by the will of the chief. Hence, so soon as states are formed, they acquire a kind of personal properties; and we may, consequently, with due proportion, attribute to them whatever agrees in particular with man; such as certain actions and rights that properly belong to them, certain duties they are obliged to fulfill, &c.

V. This being supposed, the establishment of states introduces a kind of society among them, similar to that which is natural between men; and the same reasons which induce men to maintain union among themselves, ought, likewise, to engage nations or their sovereigns to keep up a good understanding with one another.

It is necessary, therefore, there should be some law among nations to serve as a rule for mutual commerce. Now this law can be nothing else but the law of nature itself, which is then distinguished by the name of the law of nations. *Natural law*, says Hobbes, very justly, *is divided into the natural law of man, and the natural law of states*; and the latter is what we call *law of nations*. Thus natural law and the law of nations are, in reality, one and the same thing, and differ only by an external denomination. We must, therefore, say that the law of nations, properly so called, and considered as a law proceeding from a superior, is nothing else but the law of nature itself, not applied to men, considered simply as such, but to nations, states, or their chiefs, in

the relations they have together, and the several interests they have to manage between each other.

VI. There is no room to question the reality and certainty of such a law of nations, obligatory of its own nature, and to which nations, or the sovereigns that rule them, ought to submit. For if God, by means of right reason, imposes certain duties between individuals, it is evident he is likewise willing that nations, which are only human societies, should observe the same duties between themselves. *

VII. But in order to say something more particular concerning this subject, let us observe that the natural state of nations, in respect to each other, is that of society and peace. This society is likewise a state of equality and independence, which establishes a parity of right between them, and engages them to have the same regard and respect for one another. Hence the general principle of the law of nations is nothing more than the general law of sociability, which obliges all nations that have any intercourse with one another to practice those duties to which individuals are naturally subject.

These remarks may serve to give us a just idea of that art so necessary to the directors of states, and distinguished commonly by the name of *polity*. Polity, considered with regard to foreign states, is that ability and address by which a sovereign provides for the preservation, safety, prosperity, and glory of the nation he governs, by respecting the laws of justice and humanity; that is, without doing any injury to other states, but rather by procuring their advantage, so much as in reason can be expected. Thus the polity of sovereigns is the same as prudence among private people; and, as we condemn in the latter any art or cunning, that makes them pursue their own advantage to the prejudice of others, so the like art would be censurable in princes, were they bent upon procuring the advantage of their own people by injuring other nations. The *reason of state*, so often alledged to justify the proceedings or enterprises of princes, cannot really be admitted for this end, but inasmuch as it is reconcilable with the common

* See chap. v. sec. 8.

Opinions of Grotius.

interest of nations, or, which amounts to the same thing, with the unalterable rules of sincerity, justice and humanity.

VIII. Grotius, indeed, acknowledges that the law of nature is common to all nations; yet he establishes a positive law of nations contradistinct from the law of nature; and reduces this law of nations to a sort of human law, which has acquired a power of obliging in consequence of the will and consent of all or of a great many nations. He adds, that the maxims of this law of nations are proved by the perpetual practice of people and the testimony of historians.

But it has been justly observed that this pretended law of nations, contradistinct from the law of nature, and invested, nevertheless, with a force of obliging, whether the people consent to it or not, is a supposition destitute of all foundation. For,

1. All nations are with regard to one another in a natural independence and equality. If there be, therefore, any common law between them, it must proceed from God, their common sovereign.

2. As for what relates to customs, established by an express or tacit consent among nations, these customs are neither of themselves, nor universally, nor always obligatory. For, from this only, that several nations have acted towards one another for a long time after a particular manner in particular cases, it does not follow that they have laid themselves under a necessity of acting always in the same manner for the time to come, and much less that other nations are obliged to conform to those customs.

3. Again, those customs are so much less capable of being an obligatory rule of themselves, as they may happen to be bad or unjust. The profession of a corsair or pirate was, by a kind of consent, esteemed a long while lawful between nations that were not united by alliance or treaty. It seems, likewise, that some nations allowed themselves the use of poisoned arms in time of ware.* Shall we say that these were customs authorized by the law of nations, and really obligatory in respect to different people? Or shall we not rather consider them as barbarous practices, from

* See Virgil, *Æneid*, book x. ver. 139.

which every just and well-governed nation ought to refrain? We cannot, therefore, avoid appealing always to the law of nature, the only one that is really universal, whenever we want to judge whether the customs established between nations have any obligatory effect.

4. All that can be said on this subject is, that when customs of an innocent nature are introduced among nations, each of them is reasonably supposed to submit to those customs, so long as they have not made any declaration to the contrary. This is all the force or effect that can be given to received customs; but a very different effect from that of a law, properly so called.

IX. These remarks give us room to conclude that the whole might, perhaps, be reconciled by distinguishing two species of laws of nations. There is certainly an universal, necessary and self-obligatory law of nations, which differs in nothing from the law of nature, and is consequently immutable, insomuch that the people or sovereigns cannot dispense with it, even by common consent, without transgressing their duty. There is, besides, another law of nations, which we may call arbitrary and free, as founded only on an express or tacit convention; the effect of which is not of itself universal, being obligatory only in regard to those who have voluntarily submitted thereto, and only so long as they please, because they are always at liberty to change or repeal it. To this we must, likewise, add that the whole force of this sort of law of nations ultimately depends on the law of nature, which commands us to be true to our engagements. Whatever really belongs to the law of nations may be reduced to one or other of these two species; and the use of this distinction will easily appear by applying it to particular questions, which relate either to war, for example, to ambassadors, or to public treaties, and to the deciding of disputes, which sometimes arise concerning these matters, between states.

X. It is a point of importance to attend to the origin and nature of the law of nations, such as we have now explained them. For, besides that it is always advantageous to form just ideas of things, this is still more necessary in matters of practice and morality. It is owing, perhaps, to our distinguishing the law of

Morality of Actions.

nations from natural law, that we have insensibly accustomed ourselves to form quite a different judgment between the actions of the state and those of individuals. Nothing is more usual than to see men condemned in common for things which we praise, or at least excuse, in the persons of rulers. And yet it is certain, as we have already shown, that the maxims of the law of nations have an equal authority with those of the law of nature, and are equally respectable and sacred, because they have God alike for their author. In short, there is only one sole and the same rule of justice for all mankind. Governments which infringe the laws of nations commit as great crime as private people who violate the law of nature; and if there be any difference in the two cases, it must be charged to the account of the government,* whose unjust actions are always attended with more dreadful consequences than those of private people.

CHAPTER VII.

Whether there be any Morality of Actions, any Obligation or Duty, Antecedent to the Laws of Nature, and Independent to the Idea of a Legislator.

I. THE morality of human actions being founded in general on the relations of agreeableness or disagreeableness between those actions and the law, according as we have shown in the eleventh chapter of the first part, there is no difficulty, when once we acknowledge the laws of nature, to affirm that the morality of actions depends on their conformity or opposition to those very laws: This is a point on which all civilians and ethic writers are agreed. But they are not so unanimous in regard to the first principle, or original cause of obligation and morality.

A great many are of the opinion that there is no other principle of morality, but the divine will manifested by the laws of nature.

See part i. chap. xi. sec. 12.

The idea of *morality*, they say, necessarily includes that of obligation; obligation supposes law, and law, a legislator. If, therefore, we abstract from all law, and, consequently, from a legislator, we shall have no such thing as right, obligation, duty or morality, properly so called.

Others there are who acknowledge, indeed, that the divine will is really a principle of obligation, and, consequently, a principle of the morality of human actions; but they do not stop here. They pretend that antecedent to all law, and independent of a legislator, there are things which, of themselves and by their own nature, are honest or dishonest; that, reason having once discovered this essential and specific difference of human actions, it imposes on man a necessity of performing the one and omitting the other; and that this is the first foundation of obligation, or the original source of morality and duty.

II. What we have already said concerning the primitive rule of human actions, and the nature and origin of obligation,* may help to throw some light on the present question. But, in order to illustrate it better, let us turn back and resume the thing from its first principles, by endeavoring to assemble here, in a natural order, the principal ideas that may lead us to a just conclusion.

1. I observe, in the first place, that every action, considered purely and simply in itself, as a natural motion of the mind or body, is absolutely indifferent, and cannot, in this respect, claim any share of morality.

This is what evidently appears; for as much as the same natural action is esteemed sometimes lawful and even good, and at other times unlawful or bad. To kill a man, for instance, is a bad action in a robber; but it is lawful or good in an executioner, or in a citizen or soldier, who defends his life or country, unjustly attacked; a plain demonstration that this action, considered in itself, and as a simple operation of the natural faculties, is absolutely indifferent and destitute of all morality.

2. We must take care to distinguish here between the physical and moral consideration. There is undoubtedly a kind of natural

* See part i. chap. v. and vi.

 Three Rules of Human Actions.

goodness or malignity in actions, which, by their own proper and internal virtue, are beneficial or hurtful, and produce the physical good or evil of man. But this relation between the action and its effect is only physical; and, if we stop here, we are not yet arrived at morality. It is a pity we are frequently obliged to use the same expressions for the physical and moral ideas, which is apt to create some confusion. It were to be wished that languages had a greater exactness in distinguishing the nature and different relations of things by different names.

3. If we proceed further, and suppose that there is some rule of human actions, and compare afterwards these actions with the rule, the relation resulting from this comparison is what properly and essentially constitutes morality. *

4. Thence it follows that, in order to know which is the principal or efficient cause of the morality of human actions, we must previously be acquainted with this rule.

5. Finally, let us add that this rule of human actions may, in general, be two sorts, either internal or external; that is, it may either be found in man himself, or it must be sought for somewhere else. Let us now make an application of these principles.

III. We have already seen † that man finds within himself several principles to discern good from evil, and that these principles are so many rules of his conduct. The first directive principle we find within ourselves, is a kind of instinct, commonly called moral sense, which, pointing out readily, though confusedly and without reflection, the most sensible and most striking part of the difference between good and evil, makes us love the one, and gives us an aversion for the other by a kind of natural sentiment.

The second principle is reason, or the reflection we make on the nature, relations and consequences of things; which gives us a more distinct knowledge, by principles and rules, of the distinction between good and evil in all possible cases.

But to these two internal principles we must join a third, namely, the divine will. For man being the handiwork of God, and deriving from the Creator his existence, his reason, and all his facul-

* See part i. chap. xi. sec. 1. † Part i. chap. v. and part ii. chap. iii.

ties, he finds himself thereby in an absolute dependence on that Supreme Being, and cannot help acknowledging him as his lord and sovereign. Therefore, as soon as he is acquainted with the intention of God in regard to his creature, this will of his master becomes his supreme rule, and ought absolutely to determine his conduct.

IV. Let us not separate these three principles. They are indeed distinct from one another, and have each their particular force; but in the actual state of man, they are necessarily united. It is sense that gives us the first notice; our reason adds more light, and the will of God, who is rectitude itself, gives it a new degree of certainty; adding, withal, the weight of his authority. It is on all these foundations united, we ought to raise the edifice of natural law, or the system of morality.

Hence it follows, that man being a creature of God, formed with design and wisdom, and endowed with sense and reason, the rule of human actions, or the true foundation of morality, is properly the will of the Supreme Being, manifested and interpreted either by moral sense or by reason. These two natural means, by teaching us to distinguish the relation which human actions have to our constitution, or which is the same thing, to the ends of the Creator, inform us what is morally good or evil, honest or dishonest, commanded or forbidden.

V. It is already a great matter to feel and to know good and evil; but this is not enough: we must likewise join to this sense and knowledge an obligation of doing the one and abstaining from the other. It is this obligation that constitutes duty, without which there would be no moral practice, but the whole would terminate in mere speculation. But which is the cause and principle of obligation and duty? Is it the very nature of things discovered by reason? Or is it the divine will? This is what we must endeavor here to determine.

VI. The first reflection that occurs to us here, and to which very few, methinks, are sufficiently attentive, is, that every rule whatsoever of human actions carries with it a moral necessity of

conforming thereto, and produces, consequently, a sort of obligation. Let us illustrate this remark.

The general notion of rule is the idea of a sure and expeditious method of gaining a particular end. Every rule supposes, therefore, a design, or the will of attaining to a certain end, as the effect we want to produce, or the object we intend to procure. And it is perfectly evident that, were a person to act merely for the sake of acting, without any particular design or determinate end, he ought not to trouble his head about directing his actions one way more than another; he should never mind either counsel or rule. This being premised, I affirm that every man who proposes to himself a particular end, and knows the means or rule which alone can conduct him to it, and put him in possession of what he desires, finds himself under a necessity of following this rule and conforming his actions to it. Otherwise, he would contradict himself; he would and he would not; he would desire the end, and neglect the only means which, by his own confession, are able to conduct him to it. Hence I conclude that every rule, acknowledged as such, that is, as a sure and only mean of attaining to the end proposed, carries with it a sort of obligation of being thereby directed. For, so soon as there is a *reasonable necessity* to prefer one manner of acting to another, every reasonable man, who intends to behave as such, finds himself thereby engaged and tied, as it were, to this manner, being hindered by his reason from acting otherwise. That is, in other terms, he is really obliged; because obligation, in its original idea, is nothing more than a restriction of liberty produced by reason, inasmuch as the counsels which reason gives us, are motives that determine us to a particular manner of acting preferable to any other. It is, therefore, true that all rules are obligatory.

VII. This obligation, indeed, may be more or less strong, more or less strict, according as the reasons, on which it is founded, are more or less numerous, and have more or less power and efficacy of themselves to determine the will.

If a particular manner of acting appears to me evidently fitter than any other for my preservation and perfection—fitter to pro-

Reason sufficient to impose Obligation.

cure my bodily health and the welfare of my soul—this motive alone obliges me to act in conformity to it. And thus we have the first degree of obligation. If I find afterwards, that, besides the advantage now mentioned, such a conduct will secure the respect and approbation of those with whom I converse, this is a new motive, which strengthens the preceding obligation, and adds still more to my engagement. But if, by pushing my reflections still further, I find, at length, that this manner of acting is perfectly agreeable to the intention of my Creator, who is willing, and intends I should follow the counsels which reason gives me as so many real laws he prescribes to me himself, it is visible that this new consideration strengthens my engagements, ties the knot still faster, and lays me under an indispensable necessity of acting after such or such a manner. For what is there more proper to determine, finally, a rational being, than the assurance he has of procuring the approbation and benevolence of his superior by acting in conformity to his will and orders, and of escaping his indignation, which must infallibly pursue a rebellious creature?

VIII. Let us follow now the thread of the consequences arising from these principles.

If it be true, that every rule is of itself obligatory, and that reason is the primitive rule of human actions, it follows that reason only, independent of the law, is sufficient to impose some obligation on man, and consequently to furnish room for morality and duty, commendation and censure.

There will remain no manner of doubt on this subject, if, abstracting for a moment from superiority and law, we examine at first the state of man alone, considered merely as a rational being. Man proposes to himself his own good—that is, the welfare of his body and soul. He searches afterwards for the means of procuring those advantages, and so soon as he has discovered them, he approves of some particular actions and condemns others; and, consequently, he approves or condemns himself, according as he acts after a manner conformable or opposite to the dictates of his reason. Does not all this evidently demonstrate that reason puts

Objections Answered.

a restraint on liberty, and lays us, therefore, under an obligation of doing or abstaining from particular things?

Let us proceed. Suppose that man, in the forementioned state, becomes the father of a family, and has a mind to act reasonably, would it be an indifferent thing to him to take care of or to neglect his children, to provide for their subsistence and education, or do neither one nor the other? Is it not, on the contrary, evident that as this different conduct necessarily procures either the good or evil of his family—the approbation or censure which reason gives it—renders it morally good or bad, worthy of praise or blame?

It would be an easy matter to pursue this way of arguing, and apply it to all the states of man. But what we have already said shows it is sufficient to consider man as a rational being, to be convinced that reason, pointing out the road, (which alone can lead him to the end he aims at,) lays him under a necessity of following this road, and of regulating thereby his conduct—that, consequently, reason alone is sufficient to establish a system of morality, obligation and duties; because, when once we suppose it is reasonable to do or to abstain from certain things, this is really owning our obligation.

IX. “But the idea of obligation, some will say, imports necessarily a being that obliges, and who ought to be distinct from the person obliged. To suppose that he who obliges, and he who is obliged, are one and the same person, is supposing that a man may make a contract with himself, which is quite absurd. Right reason is, in reality, nothing but an attribute of the person obliged; it cannot be, therefore, a principle of obligation—nobody being capable of imposing on himself an indispensable necessity of acting or not acting after such or such a manner. For, supposing a necessity, it must not be removable at the will and pleasure of the person subject to it; otherwise, it would be void of effect. If, therefore, the person on whom the obligation is imposed is the same as he who imposes it, he can disengage himself from it whenever he pleases, or rather, there is no obligation; as, when a debtor inherits the estate and rights of his cred-

itor, the debt is void. Now, duty is a debt, and neither of them can be admitted but between different persons."

X. This objection is more specious than solid. In fact, those who pretend that there is properly neither obligation nor morality without a superior and law, ought necessarily to suppose one of these two things: 1. Either that there is no other rule of human actions besides law; 2. Or, if there be any other, none but law is an obligatory rule.

The first of these suppositions is, evidently, unsupportable; and after all that has been said concerning this subject, we think it quite useless to stop here to refute it. Either reason has been idly and without a design bestowed upon man, or we must allow it to be the general and primitive rule of his actions and conduct. And what is there more natural than to think that a rational being ought to be directed by reason? If we should endeavor to evade this argument by saying, that though reason be the rule of human actions, yet there is nothing but law that can be an obligatory rule, this proposition cannot be maintained, unless we consent to give the name of obligation to some other restriction of liberty as well as to that which is produced by the will and order of a superior, and then it would be a mere dispute about words. Or else we must suppose that there neither actually is, nor can even be conceived, any obligation at all, without the intervention of the will of a superior; which is far from being exactly true.

The source of the whole mistake, or the cause of the ambiguity, is our not ascending to the first principles, in order to determine the original idea of obligation. We have already said, and again we say it, that every restriction of liberty, produced or approved by right reason, forms a real obligation. That which properly and formally obliges is the dictate of conscience, or the internal judgment we pass on such or such a rule, the observance whereof appears to us just—that is, conformable to the light of reason.

XI. "But does not this manner of reasoning, some will reply, contradict the clearest notions, and subvert the ideas generally received, which make obligation and duty depend on the intervention of a superior, whose will manifests itself by the law? What

Different Meanings of Duty.

sort of thing is an obligation, imposed by reason, or which a man imposeth on himself? Cannot he always get rid of it when he has a mind; and if the creditor and debtor, as we have already observed, be one and the same person, can it be properly said that there is any such thing as a debt?"

This reply is grounded on an ambiguity, or supposes the thing in question. It supposes all along that there neither is, nor can be, any other obligation than that which proceeds from a superior or law. I agree that such is the common language of civilians; but this makes no manner of alteration in the nature of the thing. What comes afterwards proves nothing at all. It is true, that man may, if he has a mind, withdraw himself from the obligations which reason imposes on him; but, if he does, it is at his peril, and he is forced himself to acknowledge that such a conduct is quite unreasonable. But to conclude from this, that reason alone cannot oblige us, is going too far; because this consequence would equally invalidate the obligation imposed by a superior. For, in fine, the obligation produced by law is not subversive of liberty; we have always a power to submit to it or not, and run the hazard of the consequence. In short, the question is not concerning force or constraint; it is only in relation to a moral tie, which, in what manner soever it be considered, is always the work of reason.

XII. True it is, that duty, pursuant to its proper and strict signification, is a debt; and that, when we consider it thus, it presents the idea of an action which somebody has a right to require of us. I agree, likewise, that this manner of considering duty is just in itself. Man constitutes part of a system or whole; in consequence whereof, he has necessary relations to other beings; and the actions of man, viewed in this light, having always some relation to another person, the idea of duty, commonly speaking, includes this relation. And yet, as it frequently happens in morality that we give sometimes a more extensive and at other times a more limited sense to the same term, nothing hinders us from bestowing the more ample signification on the word *duty*, by taking it in general for an action conformable to right reason. And

then it may be very well said, that man, considered even alone, and as a separate being, has particular duties to fulfill. It is sufficient for this end, that there be some actions which reason approves, and others which it condemns. These different ideas have nothing in them that is opposite; on the contrary, they are perfectly reconciled, and receive mutual strength and assistance from each other.

XIII. The result of what we have been now saying is as follows :

1. Reason being the first rule of man, it is also the first principle of morality, and the immediate cause of all primitive obligation.

2. Man being, by his nature and state, in a necessary dependence on the Creator, who has formed him with design and wisdom, and proposed some particular views to himself in creating him, the will of God is another rule of human actions, another principle of morality, obligation and duty.

3. We may, therefore, say there are, in general, two sorts of morality or obligations : one antecedent to the law, and the work of reason; the other, subsequent to the law, and properly the effect thereof: it is on this, that the forementioned distinction of internal and external obligation is founded.*

4. True it is, that those different species of obligation have not all the same force. That which arises from the law, is, without doubt, the most perfect; it lays the strongest restriction on liberty, and merits, therefore, the name of obligation by way of preference. But we must not thence infer that it is the only one, and that there can be none of any other kind. One obligation may be real, though it be different from, and even weaker than, another.

5. It is so much the more necessary to admit these two sorts of obligation and morality, as that which renders the obligation of law the most perfect is its uniting the two species—being internal and external both at the same time.† For were there no attention given to the very nature of the laws, and were the things

* See part i, chap. vi, sect. 13. † See part i, chap. ix, sect. 12.

 This System does not Weaken Obligations.

they command or prohibit not to merit the approbation or censure of reason, the authority of the legislator would have no other foundation but that of power; and laws being then no more than the effect of an arbitrary will, they would produce rather a constraint, properly so called, than any real obligation.

These remarks are especially, and in the exactest manner, applicable to the laws of nature. The obligation these produce, is, of all others, the most efficacious and extensive; because, on one side, the disposition of these laws is, in itself, very reasonable, being founded on the nature of the actions, their specific differences, and the relation or opposition they have to particular ends. On the other side, the divine authority, which enjoins us to observe these rules as laws he prescribes to us, adds a new force to the obligation they produce of themselves, and lays us under an indispensable necessity of conforming our actions to them.

6. From these remarks it follows that those two ways of establishing morality, whereof one sets up reason and the other the will of God for its principle, ought not to be placed in opposition, as two incompatible systems, neither of which can subsist without destroying or excluding the other. On the contrary, we should join these two methods, and unite the two principles, in order to have a complete system of morality, really founded on the nature and state of man. For man, as a rational being, is subject to reason; and, as a creature of God, to the will of the Supreme Being. As these two qualities have nothing opposite or incompatible in their nature, these two rules, reason and the divine will, are perfectly reconciled; they are even naturally connected and strengthened by their junction. And, indeed, it could not be otherwise; for, in fine, God himself is the author of the nature of man, of his constitution, state, reason, and faculties; the whole is the work of God; and ultimately depends on his will and institution.

XIV. This manner of establishing the foundation of obligation and duty, is so far from weakening the system of natural law or morality, that we affirm it rather gives it a greater solidity and force. This is tracing the thing to the very source; it is laying

the foundation of the edifice. I grant that, in order to reason well on morality, we ought to take things as they are, without making abstractions; that is, we should attend to the nature and actual state of man, by uniting and combining all the circumstances that essentially enter into the system of humanity. But this does not hinder us from considering likewise the system of man in its particulars, and, as it were, by parts, to the end that an exact knowledge of each of those parts may help us to understand better the whole. It is the only method we can take in order to attain the end.

XV. What has been hitherto set forth may help to explain and justify at the same time a thought of Grotius in his preliminary discourse, §11. This author having established, after his manner, the principles and foundation of natural law, on the constitution of human nature, adds, *that all he has been saying would in some measure take place, were we even to grant there was no God; or that he did not concern himself about human affairs.* It is obvious, by his very manner of expressing himself, that he does not intend to exclude the divine will from the system of natural law. This would be mistaking his meaning; because he himself establishes this will of the Creator as another source of right. All he means is, that, independent of the intervention of God, considered as a legislator, the maxims of natural law having their foundation in the nature of things, and in the human constitution, reason alone imposes already on man a necessity of following those maxims, and lays him under an obligation of conforming his conduct to them. In fact, it cannot be denied but that the ideas of order, agreeableness, honesty, and conformity to right reason, have at all times made an impression on man, at least to a certain degree, and among nations somewhat civilized. The human mind is formed in such a manner that even those who do not comprehend these ideas in their full exactness and extent, have nevertheless a confused notion thereof, which inclines them to acquiescence so soon as they are proposed.

XVI. But while we acknowledge the reality and certainty of those principles, we ought likewise to own that, if we proceed no

Consequences of Preceding Chapter.

farther, we are but half way on our journey; this would be unreasonably attempting to establish a system of morality independent of religion. For were we even to grant that such a system is not destitute of all foundation, yet it is certain it could never produce of itself so effectual an obligation as when it is joined with the divine will. Since the authority of the Supreme Being gives the force of laws, properly so called, to the maxims of reason, these maxims acquire thereby the highest degree of strength they can possibly have to bind and subject the will, and to lay us under the strictest obligation. But (once more we repeat it) to pretend, therefore, that the maxims and counsels of reason, considered in themselves, and detached, as it were, from God's command, are not at all obligatory, is carrying the thing too far; it is concluding beyond our premises, and admitting only one species of obligation. Now this is not only unconformable to the nature of things, but, as we have already observed, it is weakening even the obligation resulting from the will of the legislator. For the divine ordinances make a much stronger impression on the mind, and are followed with a greater subjection in the will, in proportion as they are approved by reason, as being in themselves perfectly agreeable to our nature, and extremely conformable to our constitution and state.

CHAPTER VIII.

Consequences of the Preceding Chapter—Reflections on the Distinctions of Just, Honest, and Useful.

I. THE reflections contained in the foregoing chapter, give us to understand that there is a vast deal of ambiguity and mistake in the different sentiments of writers in relation to morality, or the foundation of natural laws. They do not always ascend to the first principles, neither do they define and distinguish ex-

actly; they suppose an opposition between ideas that are reconciled, and ought even to be joined together. Some reason in too abstract a manner on the human system; and, following only their own metaphysical speculations, never attend sufficiently to the actual state of things and to the natural dependence of man. Others, considering principally this dependence, reduce the whole to the will and orders of the sovereign master, and seem thus to lose sight of the very nature and internal constitution of man, from which it cannot, however, be separated. These different ideas are just in themselves; yet we must not establish the one by excluding the other, or by explaining it to the other's prejudice. Reason, on the contrary, requires us to unite them, in order to find the true principles of the human system, whose foundations must be sought for in the nature and state of man.

II. It is very common to use the words *utility*, *justice*, *honesty*, *order*, and *fitness*; but these different notions are seldom defined in an exact manner, and some of them are frequently confounded. This want of exactness must necessarily create ambiguity and confusion; wherefore, if we intend to make things clear, we must take care to define and distinguish properly.

An useful action may, methinks, be defined, that which of itself tends to the preservation and perfection of man.

A just action, that which is considered as conformable to the will of a superior, who commands.

An action is called honest when it is considered as conformable to the maxims of right reason, agreeable to the dignity of our nature, deserving of the approbation of man, and, consequently, procuring respect and honor to the person who does it.

By order, we can understand nothing else but the disposition of several things relative to a certain end, and proportioned to the effect we intend to produce.

Finally, as to fitness or agreeableness, it bears a very great affinity with order. It is a relation of conformity between several things, one of which is of itself proper for the preservation and perfection of the other, and contributes to maintain it in a good and advantageous state.

Justice, Honesty and Utility Distinct Terms.

III. We must not, therefore, confound the words *just*, *useful*, and *honest*, for they are three distinct ideas. But, though distinct from one another, they have no opposition; they are three relations, which may all agree, and be applied to one single action, considered under different respects. And, if we ascend so high as the first origin, we shall find that they are all derived from one common source, or from one and the same principle, as three branches from the same stock. This general principle is the approbation of reason. Reason necessarily approves whatever conducts us to real happiness; and as that which is agreeable to the preservation and perfection of man, that which is conformable to the will of the sovereign master, on whom he depends, and that which procures him the esteem and respect of his equals; as all this, I say, contributes to his happiness, reason cannot but approve of each of these things, separately considered, much less can it help approving, under different respects, an action in which all these properties are found united.

IV. For such is the state of things, that the ideas of just, honest, and useful, are naturally connected, and, as it were, inseparable; at least, if we attend, as we ought to do, to real, general, and lasting utility. We may say that such an utility becomes a kind of characteristic to distinguish what is truly just or honest, from what is so only in the erroneous opinions of men. This is a beautiful and judicious remark of Cicero: *The language and opinions of men are very wide, says he, from truth and right reason, in separating the honest from the useful, and in persuading themselves that some honest things are not useful, and other things are useful but not honest. This is a dangerous notion to human life. Hence we see that Socrates detested those sophists who first separated these two things in opinion, which in nature are really joined.*

In fact, the more we investigate the plan of divine providence, the more we find the Deity has thought proper to connect the moral good and evil with the physical, or, which is the same thing, the just with the useful. And, though in some particular cases the thing seems otherwise, this is only an accidental disor-

der, which is much less a natural consequence of the system than an effect of the ignorance or malice of man. Whereto we must add, that, in case we do not stop at the first appearances, but proceed to consider the human system in its full extent, we shall find that, every thing well considered and all compensations made, these irregularities will be one day or other redressed, as we shall more fully show when we come to treat of the sañctions of natural laws.

V. Here a question is sometimes proposed, whether a thing be just because God commands it, or whether God commands it because it is just.

Pursuant to our principles, the question is not at all difficult. A thing is just because God commands it; this is implied by the definition we gave of justice. But God commands such or such things, because these things are reasonable in themselves, conformable to the order and end he proposed to himself in creating mankind, and agreeable to the nature and state of man. These ideas, though distinct in themselves, are necessarily connected, and can be separated only by a metaphysical abstraction.

VI. Let us, in fine, observe that this harmony or surprising agreement, which naturally occurs between the ideas of just, honest, and useful, constitutes the whole beauty of virtue, and informs us, at the same time, in what the perfection of man consists.

In consequence of the different systems above mentioned, moralists are divided with regard to the latter point. Some place the perfection of man in such a use of his faculties as is agreeable to the nature of his being. Others, in the use of our faculties and the intention of our Creator. Some, in fine, pretend that man is perfect only as his manner of thinking and acting is proper to conduct him to the end he aims at, namely, his happiness.

But what we have above said sufficiently shows that these three methods of considering the perfection of man are very little different, and ought not to be set in opposition. As they are interwoven with one another, we ought rather to combine and unite

Application of Natural Laws to Human Actions.

them. The perfection of man consists really in the possession of natural or acquired faculties, which enable us to obtain, and actually put us in possession of solid felicity; and this, in conformity to the intention of our Creator, engraved in our nature, and clearly manifested by the state wherein he has placed us.

A modern writer has judiciously said, *that to obey only through fear of authority, or for the hope of recompense, without esteeming or loving virtue for the sake of its own excellency, is mean and mercenary. On the contrary, to practice virtue, with an abstract view of its fitness and natural beauty, without having any thought of the Creator and Conductor of the universe, is failing in our duty to the first and greatest of Beings. He only who acts jointly through a principle of reason, through a motive of piety, and with a view of his principal interest, is an honest, wise, and pious man; which constitutes, without comparison, the worthiest and completest of characters.*

CHAPTER IX.

Of the Application of Natural Laws to Human Actions; and first, of Conscience.

I. As soon as we have discovered the foundation and rule of our duties, we have only to recollect what has been already said in the eleventh chapter of the first part of this work, concerning the morality of actions, to see in what manner natural laws are applied to human actions, and what effect ought from thence to result.

The application of the laws to human actions is nothing else but the judgment we pass on their morality, by comparing them with the law; a judgment whereby we pronounce that those actions being either good, bad or indifferent, we are obliged either

to perform or omit them, or that we may use our liberty in this respect, and that, according to the side we have taken, we are worthy of praise or blame, approbation or censure.

This is done in two different manners. For either we judge on this footing of our own actions, or of those of another person. In the first case, our judgment is called conscience; but the judgment we pass on other men's actions is termed imputation. These are undoubtedly subjects of great importance, and of universal use in morality, which deserve, therefore, to be treated with some care and circumspection.

II. Conscience is properly no more than reason itself, considered as instructed in regard to the rule we ought to follow, or to the law of nature; and judging of the morality of our own actions, and of the obligations we are under in this respect, by comparing them to this rule, pursuant to the ideas we entertain thereof.

Conscience is also very frequently taken for the very judgment we pass on the morality of actions; a judgment which is the result of perfect reasoning, or the consequence we infer from two express or tacit premises. A person compares two propositions, one of which includes the laws, and the other the action; and from them he deduces a third, which is the judgment he makes of the quality of his action. Such was the reasoning of Judas. *Whosoever delivers up an innocent person to death commits a crime*; here is the law. *Now this is what I have done*; here is the action. *I have, therefore, committed a crime*; this is the consequence, or judgment, which his conscience passed on the action he committed.

III. Conscience supposes, therefore, a knowledge of the law, and particularly of the law of nature, which, being the primitive source of justice, is likewise the supreme rule of conduct. And as the laws cannot serve us for rules, but inasmuch as they are known, it follows, therefore, that conscience becomes thus the immediate rule of our actions, for it is evident we cannot conform to the law, but so far as we have notice thereof.

IV. This being premised, the *first rule* we have to lay down

Conscience a Sure Rule of Conduct.

concerning this matter is, that we must enlighten our conscience as well as consult it and follow its counsels.

We must enlighten our conscience; that is, we must spare no care or pains to be exactly instructed with regard to the will of the legislator, and to the disposition of his laws, in order to acquire just ideas of whatever is commanded, forbidden, or permitted. For plain it is that, were we in ignorance or error in this respect, the judgment we should form of our actions would be necessarily vicious, and consequently lead us astray. But this is not enough. We must join to this first knowledge the knowledge also of the action. And for this purpose it is not only necessary to examine this action in itself, but we ought likewise to be attentive to the particular circumstances that accompany it, and the consequences that may follow it. Otherwise, we should run a risk of mistake in the application of the laws, whose general decisions admit of several modifications, according to the different circumstances that accompany our actions, which necessarily influences their morality, and, of course, our duties. Thus, it is not sufficient for a judge to be well acquainted with the tenor and purport of the law, before he pronounces sentence: he should likewise have an exact knowledge of the fact, and all its different circumstances.

But it is not merely with a view of enlightening our reason, that we ought to acquire all this knowledge; it is principally in order to apply it occasionally to the direction of our conduct. We should, therefore, whenever it concerns us to act, consult previously our conscience, and be directed by its counsels. This is properly an indispensable obligation. For, in fine, conscience being, as it were, the minister and interpreter of the will of the legislator, the counsels it gives us have all the force and authority of a law, and ought to produce the same effect upon us.

V. It is only, therefore, by enlightening our conscience, that it becomes a sure rule of conduct, whose dictates may be followed with a perfect confidence of exactly fulfilling our duty. For we should be grossly mistaken, if, under a notion that conscience is the immediate rule of our actions, we were to believe that every man may lawfully do whatever he imagines the law commands or

permits. We ought, first, to know whether this notion or persuasion is justly founded. For, as Puffendorf observes, conscience has no share in the direction of human actions, but inasmuch as it is instructed concerning the law, whose office it properly is to direct our actions. If we have, therefore, a mind to determine and act with safety, we must, on every particular occasion, observe the two following rules, which are very simple of themselves, easy to practice, and naturally follow our first rule, of which they are only a kind of elucidation.

Second Rule. Before we determine to follow the dictates of conscience, we should examine thoroughly whether we have the necessary lights and helps to judge of the things before us. If we happen to want these lights and helps, we can neither decide, nor, much less, undertake any thing, without an inexcusable and dangerous temerity. And yet nothing is more common than to transgress against this rule. What multitudes, for example, determine on religious disputes, or difficult questions concerning morality or politics, though they are no way capable of judging or reasoning about them.

Third Rule. Supposing that, in general, we have necessary lights and helps to judge of the affair before us, we must afterwards see whether we have actually made use of them; insomuch that, without a new inquiry, we may follow what our conscience suggests. It happens every day, that, for want of attending to this rule, we let ourselves be quietly prevailed upon to do a great many things which we might easily discover to be unjust, had we given heed to certain clear principles, the justice and necessity of which is universally acknowledged.

When we have made use of the rules here laid down, we have done whatever we could and ought; and it is morally certain, that, by thus proceeding, we can neither mistake in our judgment, nor be wrong in our determinations. But if, notwithstanding all these precautions, we should happen to mistake, which is not absolutely impossible, this would be an infirmity inseparable from human nature, and would carry its excuse along with it in the eye of the Supreme Legislator.

Antecedent and subsequent Conscience.

VI. We judge of our actions either before or after we have done them; wherefore there is an antecedent and a subsequent conscience.

This distinction gives us an opportunity to lay down a *fourth rule*; which is, that a prudent man ought to consult his conscience before and after he has acted.

To determine to act without having previously examined whether what we are going to do be good or evil, manifestly indicates an indifference for our duty, which is a most dangerous state in respect to man; a state capable of throwing him into the most fatal excesses. But as, in this first judgment, we may happen to be determined by passion, and to proceed with precipitation, or upon a very slight examen, it is therefore necessary to reflect again on what we have done, either in order to be confirmed in the right side, if we have embraced it, or to correct our mistake, if possible, and to guard against the like faults for the future. This is so much the more important, as experience shows us that we frequently judge quite differently between a past and a future transaction; and the prejudices or passions, which may lead us astray, when we are to take our resolution, oftentimes disappear, either in the whole or part, when the action is over, and leave us then more at liberty to judge rightly of the nature and consequences of the action.

The habit of making this double examen, is the essential character of an honest man; and, indeed, nothing can be a better proof of our being seriously inclined to discharge our several duties.

VII. The effect resulting from this revisal of our conduct is very different, according as the judgment we pass on it absolves or condemns us. In the first case, we find ourselves in a state of satisfaction and tranquility, which is the surest and sweetest recompense of virtue. A pure and untainted pleasure accompanies always those actions that are approved by reason; and reflection renews the sweets we have tasted, together with their remembrance. And, indeed, what greater happiness is there, than to be inwardly satisfied, and be able, with a just confidence, to

promise ourselves the approbation and benevolence of the sovereign Lord, on whom we depend? If, on the contrary, conscience condemns us, this condemnation must be accompanied with inquietude, trouble, reproaches, fear, and remorse; a state so dismal, that the ancients have compared it to that of a man tormented by the furies. *Every crime, says the satirist, is disapproved by the very person who commits it; and the first punishment the criminal feels is, that he can not avoid being self-condemned, were he even to find means of being acquitted before the prætor's tribunal.** Hence the subsequent conscience is said to be quiet or uneasy, good or bad.

VIII. The judgment we pass on the morality of our actions is likewise susceptible of several different modifications, that produce new distinctions of conscience, which we should here point out. These distinctions may, in general, be equally applied to the two first species of conscience above mentioned; but they seem more frequently and particularly to agree with the antecedent conscience.

Conscience is, therefore, either decisive or dubious, according to the degree of persuasion a person may have concerning the quality of the action.

Whence we pronounce decisively, and without any hesitation, that an action is conformable or opposite to the law, or that it is permitted, and, consequently, we ought to do or omit it, or else that we are at liberty in this respect; this is called a decisive conscience. If, on the contrary, the mind remains in suspense, through the conflict of reasons we see on both sides, and which appear to us of equal weight, insomuch that we cannot tell to which side we ought to incline; this is called a dubious conscience. Such was the doubt of the Corinthians, who did not know whether they could eat things sacrificed to idols, or whether they ought to abstain from them. On the one side, the evangelical liberty seemed to permit it; on the other, they were restrained through apprehension of seeming to give thereby a kind of con-

 Scrupulous Conscience.

sent to idolatrous acts. Not knowing what resolution to take, they wrote to St. Paul to remove their doubt.

The distinction makes room also for some rules.

Fifth Rule. We do not entirely discharge our duty by doing with a kind of difficulty and reluctance what the decisive conscience ordains; we ought to set about it readily, willingly, and with pleasure.* On the contrary, to determine, without hesitation or repugnance, against the motions of such a conscience, is showing the highest degree of depravation and malice, and renders a person incomparably more criminal than if he were impelled by a violent passion or temptation.

Sixth Rule. With regard to a dubious conscience, we ought to use all endeavors to get rid of our uncertainty, and to forbear acting so long as we do not know whether we do good or evil. To behave otherwise, would indicate an indirect contempt of the law, by exposing one's self voluntarily to the hazard of violating it, which is a very bad conduct. The rule now mentioned ought to be attended to, especially in matters of great importance.

Seventh Rule. But if we find ourselves in such circumstances as necessarily oblige us to determine to act, we must then, by a new attention, endeavor to distinguish the safest and most probable side, and whose consequences are the least dangerous. Such is generally the opposite side to passion; it being the safest way not to listen too much to our inclinations. In like manner, we run very little risk of committing a mistake in a dubious case, by following rather the dictates of charity than the suggestion of self-love.

IX. Besides the dubious conscience, properly so called, and which we may likewise distinguish by the name of irresolute, there is a scrupulous conscience, produced by slight and frivolous difficulties that arise in the mind, without seeing any solid reason for doubting.

Eighth Rule. Such scruples as these ought not to hinder us from acting if it be necessary; and, as they generally arise either

* See part ii. chap. v, §7.

from a false delicacy of conscience, or from gross superstition, we should soon get rid of them were we to examine the thing with attention.

X. Let us afterwards observe, that the decisive conscience, according as it determines good or evil, is either right or erroneous.

Those, for example, who imagine we ought to abstain from strict revenge, though the law of nature permits a legitimate defense, have a right conscience. On the other hand, those who think that the law, which requires us to be faithful to our engagements, is not obligatory towards heretics, and that we may lawfully break through it in respect to them, have an erroneous conscience.

But what must we do in case of an erroneous conscience?

Ninth Rule. I answer, that we ought always to follow the dictates of conscience, even when it is erroneous, and whether the error be vincible or invincible.

This rule may appear strange at first sight, since it seems to prescribe evil; because there is no manner of question but that a man who acts according to an erroneous conscience, espouses a bad cause. Yet this is not so bad as if we were to determine to do a thing with a firm persuasion of its being contrary to the decision of the law; for this would denote a direct contempt of the legislator and his orders, which is a most criminal disposition. Whereas the first resolution, though bad in itself, is, nevertheless, the effect of a landable disposition to obey the legislator and conform to his will.

But it does not thence follow that we are always excusable in being guided by the dictates of an erroneous conscience; this is true only when the error happens to be invincible. If, on the contrary, it is surmountable, and we mistake with respect to what is commanded or forbidden, we sin either way, whether we act according to or against the decisions of conscience. This shows (to mention it once more) what an important concern it is to enlighten our conscience, because, in the case just now mentioned, the person with an erroneous conscience is actually under a mel-

Demonstrative and Probable Conscience.

ancholy necessity of doing ill which ever side he takes. But, if we should happen to mistake with regard to an indifferent thing, which we are erroneously persuaded is commanded or forbidden, we do not sin in that case but when we act contrary to the light of our own conscience.

XI. In fine, there are two sorts of right conscience ; the one clear and demonstrative, the other merely probable.

The clear and demonstrative conscience is that which is founded on certain principles, and on demonstrative reason, so far as the nature of moral things will permit ; insomuch that one may clearly and distinctly prove the rectitude of a judgment made on such or such an action. On the contrary, though we are convinced of the truth of a judgment, yet if it be founded only on verisimilitude, and we cannot demonstrate its certainty in a methodical manner, and by incontestible principles, it is then only a probable conscience.

The foundations of probable conscience are, in general, authority and example, supported by a confused notion of natural fitness, and sometimes by popular reasons, which seem drawn from the very nature of things. It is by this kind of conscience that the greatest part of mankind are conducted, there being very few who are capable of knowing the indispensable necessity of their duties, by deducing them from their first sources by regular consequences ; especially when the point relates to maxims of morality, which, being somewhat remote from the first principles, require a longer chain of reasonings. This conduct is far from being unreasonable. For those who have not sufficient light for themselves to judge properly of the nature of things, cannot do better than recur to the judgment of enlightened persons ; this being the only resource left them to act with safety. We might in this respect compare the persons above mentioned to young people, whose judgment has not yet acquired its full maturity, and who ought to listen and conform to the counsels of their superiors. The authority, therefore, and example of sage and enlightened men, may, in some cases, in default of our own lights, prove a reasonable principle of determination and conduct.

But, in fine, since those foundations of probable conscience are not so solid as to permit us absolutely to build upon them, we must establish, as a *tenth rule*, that we ought to use all our endeavors to increase the degree of verisimilitude in our opinions in order to approach as near as possible to the clear and demonstrative conscience; and we must not be satisfied with probability but when we can do no better.

CHAPTER X.

Of the Merit and Demerit of Human Actions; and of their Imputation Relative to the Laws of Nature.

I. IN explaining the nature of human actions, considered with regard to right,* we observed that an essential quality of these actions is to be susceptible of imputation; that is, the agent may be reasonably looked upon as the real author thereof, may have it charged to his account, and be made answerable for it; insomuch that the good or bad effects thence arising may be justly attributed and referred to him as to the efficient cause, concerning which we have laid down this principle, that every voluntary action is of an imputable nature.

We give, in general, the name of moral cause of an action to the person who produced it, either wholly or in part, by a determination of his will; whether he executes it himself, physically and immediately, so as to be author thereof, or whether he procure it by the act of some other person, and becomes thereby its cause. Thus, whether we wound a man with our own hands, or set assassins to waylay him, we are equally the moral cause of the evil thence resulting.

It was observed, likewise, that we must not confound the imputability of human actions with their actual imputation. The

* See part i. chap. iii.

Imputability and Imputation.

former, as has been just now mentioned, is a quality of the action; the latter is an act of the legislator or judge, who lays to a person's charge an action that is of an imputable nature.

II. Imputation is properly, therefore, a judgment, by which we declare that a person, being the author or moral cause of an action commanded or forbidden by the laws, the good or bad effects that result from this action ought to be actually attributed to him; that he is, consequently, answerable for them, and as such is worthy of praise or blame, of recompense or punishment.

The judgment of imputation, as well as that of conscience, is made by applying the law to the action, and comparing one with the other, in order to decide afterwards the merit of the fact, and to make the author consequently feel the good or evil, the punishment or recompense, which the law has thereto annexed. All this necessarily supposes an exact knowledge of the law and of its right sense, as well as of the fact, and such circumstances thereof as may in any way relate to the determination of the law. A want of this knowledge must render the application false and the judgment erroneous.

III. Let us produce a few examples. One of the *Horatii*, who remained conqueror in the combat between the brothers of this name and the three *Curiatii*, inflamed with anger against his sister, for bewailing the death of one of the *Curiatii*, her lover, and for bitterly reproaching him therewith, instead of congratulating him for his victory, slew her with his own hand. He was accused before the *Duumvirs*; and the question was, whether the law against murderers ought to be applied in the present case, in order to make him undergo the punishment. This was the opinion of the judges, who, in fact, condemned the young Roman. But an appeal being made to the people, they judged quite otherwise. Their notion was that the law ought not to be applied to the fact; because a Roman lady, who seemed to be more concerned about her own particular interest than sensible to the good of her country, might, in some measure, be considered and treated as an enemy; wherefore they pronounced the young man innocent. Let us add another example of an advantageous imputa-

tion, or of a judgment of recompense. Cicero, in the beginning of his consulate, discovered the conspiracy of Cataline, which menaced the republic with ruin. In this delicate conjuncture, he behaved with so much prudence and address, that the conspiracy was stifled, without any noise or sedition, by the death of a few of the criminals. And yet Julius Cæsar, and some other enemies of Cicero, accused him before the people for having put citizens to death contrary to rule, and before the senate or people had passed judgment against them. But the people, attending to the circumstances of the fact, to the danger the republic had escaped, and to the important service Cicero had done, so far from condemning him as an infringer of the laws, decreed him the glorious title of *father of his country*.

IV. In order to settle the principles and foundations of this matter, we must observe, 1. That we ought not to conclude the actual imputation of an action merely from its imputability. An action, to merit actual imputation, must necessarily have the concurrence of these two conditions: first, that it be of an imputable nature; and, secondly, that the agent be under some obligation of doing or omitting it. An example will clear up the thing. Let us suppose two young men with the same abilities and conveniences, but under no obligation of knowing algebra; one of them applies himself to this science, and the other does not; though the action of the one and the other's omission are by themselves of an imputable nature, yet in this case they can be neither good nor bad. But were we to suppose that these two young men were designed by their prince, the one for some office of state, and the other for a military employment, in this case their application or neglect in instructing themselves in jurisprudence, for example, or in the mathematics, would be justly imputed to them. The reason is, they are both indispensably obliged to acquire such knowledge as is necessary for discharging properly the offices or employments to which they are called. Hence it is evident, that, as imputability supposeth the power of acting or not acting, actual imputation requires, moreover, that a person be under an obligation of doing either one or the other.

Consequences of Actions.

V. 2. When we impute an action to a person, we render him, as has been already observed, answerable for the good or bad consequences of what he has done. Hence it follows, that, in order to make a just imputation, there must be some necessary or accidental connection between the thing done or omitted, and the good or bad consequences of the action or omission; and, besides, the agent must have had some knowledge of this connection, or, at least, he must have been able to have a probable foresight of the effects of his action. Otherwise, the imputation cannot take place, as will appear by a few examples. A gunsmith sells arms to a man, who has the appearance of a sensible, sedate person, and does not seem to have any bad design. And yet this man goes instantly to make an unjust attack on another person, and kills him. Here the gunsmith is not at all chargeable, having done nothing but what he had a right to do; and, besides, he neither could nor ought to have foreseen what happened. But if a person carelessly leave a pair of pistols charged on the table, in a place exposed to every body, and a child, insensible of the danger, happens to wound or kill himself; the former is certainly answerable for the misfortune; by reason this is a clear and immediate consequence of what he has done, and he could and ought to have foreseen it.

We must reason in the same manner with respect to an action productive of some good. This good cannot be attributed to a person who has been the cause of it without knowledge or thought thereof. But, in order to merit thanks and acknowledgment, there is no necessity of our being entirely sure of success; it is sufficient if there was room to reasonably presume it; and were the effect absolutely to fail, the intention would not be the less commendable.

VI. 3. But, in order to ascend to the first principles of this theory, we must observe, that, as man is supposed to be obliged by his nature and state to follow certain rules of conduct, the observance of those rules constitutes the perfection of his nature and state; and, on the contrary, the infringing of them forms the degradation of both. Now, we are made after such a manner,

that perfection and order please us of themselves; while imperfection and disorder, and whatever relates thereto, naturally displease us. Consequently, we acknowledge that those who, answering the end they were designed for, perform their duty, and contribute thus to the good and perfection of the human system, are deserving of our approbation, esteem and benevolence; that they may reasonably expect these sentiments in their favor, and have some sort of right to the advantageous effects which naturally arise from them. We cannot, on the contrary, avoid condemning those who, through a bad use of their faculties, degrade their own state and nature; we confess they are worthy of disapprobation and blame, and that it is agreeable to reason the bad effects of their conduct should fall upon themselves. Such are the foundations of merit and demerit.

VII. Merit, therefore, is a quality which entitles us to the approbation, esteem and benevolence of our superiors or equals, and to the advantages thence resulting. Demerit is an opposite quality, which, rendering us worthy of the censure and blame of those with whom we converse, obliges us, as it were, to acknowledge that it is reasonable they should entertain those sentiments toward us, and that we are under a melancholy obligation of bearing the bad effects that flow from them.

These notions of merit and demerit have, therefore, it is plain, their foundation in the very nature of things, and are perfectly agreeable to common sense and the notions generally received. Praise and blame, where people judge reasonably, always follow the quality of actions, according as they are morally good or bad. This is clear with respect to the legislator; he must contradict himself in the grossest manner were he not to approve what is conformable, and to condemn what is opposite, to his laws. And as far as those that depend on him, this very dependence obliges them to regulate their judgment on this subject.

VIII. 4. We have already observed,* that some actions are better than others, and that bad ones may, likewise, be more or

* Part i, chap. xi, sect. 12.

Imputation either Simple or Efficacious.

less so, according to the different circumstances that attend them, and the disposition of the person that does them. Merit and demerit have, therefore, their degrees; they may be greater or less. Wherefore, when we are to determine exactly how far an action ought to be imputed to a person, we should have regard to these differences; and the praise or blame, the recompense or punishment, ought, likewise, to have their degrees in proportion to the merit or demerit. Thus, according as the good or evil, proceeding from an action, is more or less considerable—according as there was more or less facility or difficulty to perform or to abstain from this action—according as it was done with more or less reflection and liberty—and, finally, according as the reasons, that ought to have determined us thereto, or diverted us from it, were more or less strong, and the intention and motives were more or less noble and generous, the imputation is made after a more or less efficacious manner, and its effects are more or less profitable or pernicious.

IX. 5. Imputation, as we have already hinted, may be made by different persons; and it is easy to comprehend, that, in those different cases, the effects thereof are not always the same, but that they must be more or less important, according to the quality of the persons, and the different right they have in this respect. Sometimes imputation is confined simply to praise or blame, and at other times it goes further. This gives us room to distinguish two sorts of imputation: one simple, and the other efficacious. The first consists only in approving or disapproving the action; insomuch that no other effect arises from it with regard to the agent. But the second is not confined to blame or praise; it produces, moreover, some good or bad effect with regard to the agent—that is, some real and positive good or evil that befalls him.

X. 6. Simple imputation may be made indifferently by all, whether they have or have not a particular and personal interest in the doing or omitting of the action; it is sufficient they have a general and indirect interest. And as we may affirm that all the members of society are interested in the due observance of the

laws of nature, hence they have all a right to praise or condemn another man's actions, according as they are conformable or contrary to those laws. They have even a kind of obligation in this respect. The regard they owe to the legislator and his laws requires it of them; and they would be wanting in their duty to society and to individuals were they not to testify, at least by their approbation or censure, the esteem they have for probity and virtue, and their aversion, on the contrary, to iniquity and vice.

But with regard to efficacious imputation, in order to render it lawful, we should have a particular and direct interest in the performing or omitting of the action. Now, those who have such an interest are, firstly, persons whom it concerns to regulate the actions; secondly, such as are the objects thereof—namely, those toward whom we act, and to whose advantage or prejudice the thing may turn. Thus a sovereign, who has enacted laws, who commands certain things with a promise of recompense, and prohibits others under a commination of punishment, ought, without doubt, to concern himself about the observance of his laws, and has, consequently, a right to impute the actions of his subjects after an efficacious manner—that is, to reward or punish them. The same may be said of a person who has received some injury or damage by another man's action; this very thing gives him a right to impute the action efficaciously to its author, in order to obtain a just satisfaction and a reasonable indemnification.

XI. 7. It may, therefore, happen, that several persons have a right to impute, each on his side, the same action to the person who did it; because this action may interest them in different respects. And, in that case, if any of the persons concerned has a mind to relinquish his right, by not imputing the action to the agent, so far as it concerns himself, this does not, in any shape, prejudice the right of the rest, which is no way in his power. When a man does me an injury, I may, indeed, forgive him, as to what concerns myself; but this does not diminish the right the sovereign may have to take cognizance of the injury, and to punish the author as an infringer of the law, and a disturber of the civil order and government. But if all those who are interested

 Application of Principles to Different Actions.

in the action are willing not to impute it, and jointly forgive the injury and the crime, in this case the action ought to be morally esteemed as never committed, because it is not attended with any moral effect.

XII. 8. Let us, in fine, observe, that there is some difference between the imputation of good and bad actions. When the legislator has established a certain recompense for a good action, he obliges himself to give this recompense, and he grants a right of demanding it to those who have rendered themselves worthy thereof by their submission and obedience. But with respect to penalties enacted against bad actions, the legislator *may* actually inflict them, if he has a mind, and has an incontestible right to do it; insomuch that the criminal cannot reasonably complain of the evil he is made to undergo, because he has drawn it upon himself through his disobedience. But it does not thence ensue that the sovereign is obliged to punish to the full rigor; he is always master to exercise his right, or to show grace; to entirely remit, or to diminish, the punishment; and he may have very good reasons for doing either.

 CHAPTER XI.

Application of those Principles to different Species of Actions, in order to judge in what manner they ought to be Imputed.

I. WE might be satisfied with the general principles above laid down, were it not useful to make an application of them, and to point out particularly those actions or events for which we are, or are not, answerable.

1. And in the first place it follows, from what has been hitherto said, that we may impute to a person every action or omission of which he is the author or cause, and which he could or ought to have done or omitted.

Not Applicable to things Impossible.

2. The actions of those who have not the use of reason, such as infants, fools, and madmen, ought not to be imputed to them. The want of knowledge hinders, in such cases, imputation. For these persons being incapable of knowing what they are doing, or of comparing it with the laws, their actions are not properly human actions, nor do they include any morality. If we scold or beat a child, it is not by way of punishment; it is only a simple correction, by which we propose principally to hinder him from contracting a bad habit.

3. With regard to what is done in drunkenness, this state, voluntarily contracted, does not hinder the imputation of a bad action.

II. 4. We do not impute things that are really above a person's strength, no more than the omission of a thing commanded, if there has been no opportunity of doing it. For the imputation of an omission manifestly supposes these two things: first, that a person has had sufficient strength and means to act; and, secondly, that he could have made use of those means without prejudice to any other more indispensable duty, or without drawing upon himself a considerable evil, to which there was no obligation of being exposed. It must be understood, however, that the person has not brought himself into an incapacity of acting through his own fault; for then the legislator might as lawfully punish those who have reduced themselves to this incapacity as if they had refused to act when they were capable of complying. Such was, at Rome, the case of those who cut off their thumbs, in order to disable themselves from handling arms, and be exempted from the service. In like manner, a debtor is not excusable, when, through his own misconduct, he has rendered himself unable to discharge his debts. And we even become deservedly responsible for a thing in itself impossible, if we have undertaken to do it when we knew, or might easily have known, that it surpassed our strength, in case any body happens by this means to be injured.

III. 5. The natural qualities of body or mind cannot of themselves be imputed, either as good or evil. But a person is deserving of praise, when, by his application and care, these qualities

 Acts done through Ignorance or Error.

are perfected, or these defects are mended; and, on the contrary, one is justly accountable for the imperfections and infirmities that arise from bad conduct or neglect.

6. The effects of external causes and events, of what kind soever, cannot be attributed to a person either as good or evil, but inasmuch as he could and ought to procure, hinder or direct them, and as he has been either careful or negligent in this respect. Thus we charge a good or bad harvest to a husbandman's account, according as he has tilled well or ill the ground, whose culture was committed to his care.

IV. 7. As for things done through error or ignorance, we may affirm, in general, that a person is not answerable for what he has done through invincible ignorance, especially as it is involuntary in its origin and cause. If a prince travels through his own dominions disguised and *incognito*, his subjects are not to blame for not paying him the respect and honor due to him. But we should reasonably impute an unjust sentence to a judge, who, neglecting to instruct himself either in the fact or the law, should happen to want the knowledge necessary to decide with equity. But the possibility of getting instruction, and the care we ought to take for this purpose, are not strictly considered in the common run of life; we only look upon what is possible or impossible in a moral sense, and with a due regard to the actual state of humanity.

Ignorance or error, in point of laws and duties, generally passes for voluntary, and does not obstruct the imputation of actions or omissions thence arising. This is a consequence of the principles* already established. But there may happen some particular cases wherein the nature of the thing, which of itself is difficult to investigate, joined to the character and state of the person whose faculties, being naturally limited, have, likewise, been uncultivated for want of education and assistance, renders the error unsurmountable, and, consequently, worthy of excuse. It concerns the

* See part i. chap. i. sec. 12.

prudence of the legislator to weigh these circumstances, and to modify the imputation on this footing.

V. 8. Though temperament, habits, and passions, have of themselves a great force to determine some actions, yet this force is not such as absolutely hinders the use of reason and liberty, at least in respect to the execution of the bad designs they inspire. That is what all legislators suppose; and a very good reason they have to suppose it.* Natural dispositions, habits, and passions, do not determine men invincibly to violate the laws of nature. These disorders of the soul are not incurable; with some pains and assiduity one may contrive to remove them, according to Cicero's observation, who alleges to this purpose the example of Socrates.

But if, instead of endeavoring to correct those vicious dispositions, we strengthen them by habit, this does not render us excusable. The power of habit is indeed very great; it even seems to impel us by a kind of necessity. And yet experience shows it is not impossible to master it, when we are seriously resolved to make the attempt. And were it even true, that inveterate habits had a greater command over us than reason, yet, as it was in our power not to contract them, they do not at all diminish the immorality of bad actions, and, consequently, they cannot hinder them from being imputed. On the contrary, as a virtuous habit renders actions more commendable, so the habit of vice cannot but augment its blame and demerit. In short, if inclinations, passions, or habits, could frustrate the effect of laws, it would be needless to trouble our heads about any direction of human actions; for the principal object of laws in general is to correct bad inclinations, to prevent vicious habits, to hinder their effects, and to eradicate the passions, or, at least, to contain them within their proper limits.

VI. 9. The different cases hitherto exposed contain nothing very difficult or puzzling. There are some others a little more embarrassing, which require a particular discussion.

*See part i. chap. ii. sec. 16.

Of Forced Actions.

The first question is, what we are to think of forced actions; whether they are of an imputable nature, and ought actually to be imputed.

I answer, 1. That a physical violence, and such as absolutely cannot be resisted, produces an involuntary action, which, so far from meriting to be actually imputed, is not even of an imputable nature.* In this case the author of the violence is the true and only cause of the action, and as such is the only person answerable for it; whilst the immediate agent being merely passive, the fact can be no more attributed to him than to the sword, to the stick, or to any other weapon with which the blow or wound was given.

2. But if the constraint arises from the apprehension or fear of some great evil with which we are menaced by a person more powerful than ourselves, and who is able instantly to inflict it, it must be allowed that the action done in consequence of this fear, does not cease to be voluntary, and, therefore, generally speaking, is of an imputable nature.

In order to know afterwards whether it ought actually to be imputed, it is necessary to inquire, whether the person on whom the constraint is laid is under a rigorous obligation of doing or abstaining from a thing, at the hazard of suffering the evil with which he is menaced. If so, and he determines contrary to his duty, the constraint is not a sufficient reason to screen him absolutely from imputation. For, generally speaking, it cannot be questioned but a lawful superior can lay us under an indispensable obligation of obeying his orders, at the hazard of bodily pain, and even at the risk of our lives.

VII. Pursuant to these principles, we must distinguish between indifferent actions and those that are morally necessary. An action indifferent in its nature, extorted by main force, cannot be imputed to the person constrained; because, not being under any obligation in this respect, the author of the violence has no right to require anything of him. And, as the law of

*See sec. 1.

nature expressly forbids all manner of violence, it cannot authorize it at the same time, by laying the person, who suffers the violence, under a necessity of executing a thing to which he has given only a forced consent. Thus every forced promise or convention is null of itself, and has nothing in it obligatory as a promise or convention; on the contrary, it may and ought to be imputed as a crime to the author of the violence. But were we to suppose that the person who uses the constraint exercises in this respect his own right, and pursues the execution thereof, the action, though forced, is still valid, and attended with all its moral effects. Thus a debtor, who, void of any principle of honesty, satisfies his creditor only through imminent fear of imprisonment or of execution on his goods, cannot complain against his payment, as made by constraint and violence. For, being under an obligation of paying his just debts, he ought to have done it willingly and of his own accord, instead of being obliged to it by force.

As for good actions, to which a person is determined by force, and, as it were, through fear of blows or punishment, they pass for nothing, and merit neither praise nor recompense. The reason hereof is obvious. The obedience required by the law ought to be sincere; and we should discharge our duties through a conscientious principle, voluntarily, and with our own consent and free will.

Finally, with regard to actions manifestly bad or criminal, to which a person is forced through fear of some great evil, and especially death, we must lay down, as a general rule, that the unhappy circumstances under which a person labors, may, indeed, diminish the crime of a man, unequal to this trial, who commits a bad action in spite of himself, and against his own inward conviction; yet the action remains intrinsically vicious, and worthy of censure; wherefore, it may be, and actually is, imputed, unless the exception of necessity can be alleged in the person's favor.

VIII. This last rule is a consequence of the principles hitherto established. A man who determines, through fear of some

When Forced Action may be Imputed.

great evil, but without suffering any physical violence, to do a thing visibly criminal, concurs in some manner to the action, and acts voluntarily, though with regret. It does not absolutely surpass the fortitude of the human mind to resolve to suffer, nay, to die, rather than be wanting in our duty. We see a great many people who have courage of this kind for frivolous subjects, which makes a lively impression on them; and, though the thing be really difficult, yet it is not impossible. The legislator may, therefore, impose a rigorous obligation of obeying, and have just reasons for so doing. The interest of society frequently requires examples of undaunted constancy. It was never a question among civilized nations, and those that had imbibed any principles of morality, whether, for example, it was lawful to betray one's country for the preservation of life. And it is well known that the opposite maxim was a received principle among the Greeks and Romans. Several heathen moralists have strongly inculcated this doctrine, namely, that the dread of pains and torments ought not to prevail upon any man to make him do things contrary to religion or justice. *If you are summoned as a witness, says a Latin poet, in a dubious and equivocal affair, tell the truth, and do not be afraid; tell it were even Phalaris to menace you with his bull unless you bore false witness. Fix it as a maxim in your mind, that it is of the greatest of evils to prefer life to honor; and never attempt to preserve it at the expense of the only thing that can render it desirable.*

Such is the rule. It may happen, nevertheless, as we have already hinted, that the necessity a person is under may furnish a favorable exception, so as to hinder the action from being imputed. To explain this we should be obliged to enter into some particulars that belong to another place. It is sufficient here to observe, that the circumstances a person is under give us frequent room to form a reasonable presumption that the legislator himself excuses him from suffering the evil with which he is menaced, and, therefore, allows him to deviate from the decision of the law; and this may always be presumed, when the side a

person takes, in order to extricate himself from his perplexity, includes a less evil than that with which he is menaced.

IX. But Puffendorf's principles concerning this question seem to be neither just in themselves nor well connected. He lays down, as a rule, that constraint, as well as physical and actual violence, excludes all imputation, and that an action, extorted through fear, ought no more to be imputed to the immediate agent than to the sword which a person uses in giving a wound. To which he adds, that, with regard to some very infamous actions, it is a mark of a generous mind to choose rather to die than to serve as an instrument to such flagitious deeds, and that cases like these ought to be excepted. But it has been justly observed, that this author gives too great an extent to the effect of constraint; and that the example of the axe or sword, which are mere passive instruments, proves nothing at all. Besides, if the general principle is solid, we do not see why he should have excepted particular cases; or, at least, he ought to have given us some rule to distinguish those exceptions with certainty.

X. 10. But if the person who does a bad action through fear is generally answerable for it, the author of the constraint is not less so; and we may justly render him accountable for the share he has had therein.

This gives an opportunity to add a few reflections on those cases in which several persons concur to the same action, and to establish some principles, whereby we may determine in what manner the actions of one person is imputable to another. This subject, being of great use and importance, deserves to be treated with exactness.

1. Every man, strictly speaking, is answerable only for his own actions; that is, for what he himself has done or omitted; for, with regard to another person's actions, they cannot be imputed to us, but inasmuch as we have concurred to them, and as we could and ought to have procured, hindered, or at least directed them after a certain manner. The thing speaks for itself. For to impute another man's actions to a person, is declaring that the latter is the efficient, though not the only cause thereof; and,

Actions done through Fear.

consequently, that this action depended in some measure on will, either in its principle or execution.

2. This being premised, we may affirm that every man is under a general obligation of doing all he can to induce every other person to discharge his duty, and to prevent him from committing a bad action; and, consequently, not to contribute thereto himself, either directly or indirectly, with a premeditated purpose and will.

3. By a much stronger reason we are answerable for the actions of those over whom we have a particular inspection, and whose direction is committed to our care; wherefore, the good or evil done by those persons is not only imputable to themselves, but likewise to those to whose direction they are subject; according as the latter have taken or neglected the care that was morally necessary, such as the nature and extent of their commission and power required. It is on this footing we impute, for example, to the father of a family the good or bad conduct of his children.

4. Let us observe, likewise, that in order to be reasonably esteemed to have concurred to another man's action, it is not at all necessary for us to be sure of procuring or hindering it, by doing or omitting particular things; it is sufficient, in this respect, that we have some probability or verisimilitude. And as, on the one side, this default of certainty does not excuse neglect; on the other, if we have done all that we ought, the want of success cannot be imputed to us; the blame in that case falls entirely upon the immediate author of the action.

5. In fine, it is proper also to remark, that in the question now before us, we are not inquiring into the degree of virtue or malice which is found in the action itself, and, rendering it better or worse, augments its praise or censure, its recompense or punishment. All that we want, is to make a proper estimate of the degree of influence a person has had over another man's action, in order to know whether he can be considered as the moral cause thereof, and whether this cause is more or less efficacious. To distinguish this properly is a matter of some importance.

XI. In order to measure, as it were, this degree of influence

which decides the manner wherein we can impute to any one another man's action, there are several circumstances and distinctions to be observed, without which we should form a wrong judgment of things. For example, it is certain that a simple approbation, generally speaking, has much less efficacy to induce a person to act than a strong persuasion, or a particular instigation. And yet the high opinion we conceive of a person, and the credit thence arising, may occasion a simple approbation to have sometimes as great, and perhaps a greater, influence over a man's action, than the most pressing persuasion, or the strongest instigation from another quarter.

We may range under three different classes the moral causes that influence another man's action. Sometimes it is a principal cause, insomuch that the person who executes is only a subaltern agent; sometimes the immediate agent, on the contrary, is the principal cause, while the other is only the subaltern; and at other times they are both collateral causes, which have an equal influence over the action.

XII. A person ought to be esteemed the principal cause who, by doing or omitting some things, influences in such a manner another man's action or omission, that, were it not for him, this action or omission would not have happened, though the immediate agent has knowingly contributed to it. An officer, by express order of his general or prince, performs an action evidently bad. In this case the prince or general is the principal cause, and the officer only the subaltern. David was the principal cause of the death of Uriah, though Joab contributed thereto, being sufficiently apprized of the king's intention. In like manner Jezebel was the principal cause of the death of Naboth.*

I mentioned that the immediate agent must have contributed knowingly to the action. For suppose he could not know whether the action be good or bad, he can then be considered only as a simple instrument; but the person who gave the orders, being in that case the only and absolute cause of the action, is the only one

* See 2 Sam. chap. ii. and 1 Kings, chap. xxi.

Collateral Causes.

answerable for it. Such, in general, is the case of subjects who serve by order of their sovereign in an unjust war.

But the reason why a superior is deemed the principal cause of what is done by those who depend on him, is not properly their dependence; it is the order he gives them, without which it is supposed they would not of themselves have attempted the action.

From this it follows that every other person, who has the same influence over the actions of his equals, or even of his superiors, may for the same reason be considered as the principal cause. This is what we may very well apply to the counselors of princes, or to the ecclesiastics who have an ascendancy over their minds, and who make a wrong use of it sometimes, in order to persuade them to things which they would never have determined to do of themselves. In this case, praise or blame falls principally on the author of the suggestion or counsel.*

XIII. A collateral cause is, he who in doing or omitting certain things concurs sufficiently, and as much as in him lies; to another man's action; insomuch that he is supposed to cooperate with him; though one cannot absolutely presume that without his concurrence the action would not have been committed. Such are those who furnish succors to the immediate agent, or those who shelter and protect him; for example, he who, while another breaks open the door, watches all the avenues of the house in order to favor the robbery, &c. A conspiracy among several people renders them generally all guilty alike. They are all supposed equal

* We shall transcribe here with pleasure the judicious reflections of M. Bernard. In England it is very common to charge the faults of the prince to the ministers; and, I own, that very often the charge is just. But the crimes of the ministers do not always excuse the faults of the sovereign; for, after all, they have reason and understanding as well as other people, and are masters to do as they please. If they let themselves be too much governed by those who have the freest access to them, it is their fault. They ought on several occasions to see with their own eyes, and not be led by the nose by a wicked and avaricious courtier. But if they are unable to manage matters themselves, and to distinguish good from evil, they ought to resign the care of government to others who are capable; for I do not know why we may not apply to princes who govern ill, the saying of Charles Borromeus in respect to bishops, who do not feed properly their flocks. *If they are incapable of such an employment, why so much ambition? If they are capable, why so much neglect?*

Subaltern Cause—Application of Principles.

and collateral causes, as being associated for the same fact, and united in interest and will. And though each of them has not an equal part in the execution, yet their actions may be very well charged to one another's account.

XIV. Finally, a subaltern cause is he who has but a small influence or share in another man's action, and is only a slight occasion thereof by facilitating its execution; insomuch that the agent, already absolutely determined to act, and having all the necessary means for so doing, is only encouraged to execute his resolution; as when a person tells him the manner of going about it, the favorable moment, the means of escaping, &c., or when he commends his design and animates him to pursue it.

May not we rank in the same class the action of a judge who, instead of opposing an opinion supported by a generality of votes, but by himself adjudged erroneous, should acquiesce therein, either through fear or complaisance? Bad example must be also ranked among the subaltern causes. For, generally speaking, examples of this nature make impressions only on those who are otherwise inclined to evil, or subject to be easily led astray; insomuch that those who set such examples contribute but very weakly to the evil committed by imitation. And yet there are some examples so very efficacious, by reason of the character of the persons who set them, and the disposition of those who follow them, that if the former had refrained from evil, the latter would never have thought of committing it. Such are the bad examples of superiors, or of men who by their knowledge and reputation have a great ascendancy over others; these are particularly culpable of the evil which ensues from the imitation of their actions. We may reason in the same manner with respect to several other cases. According as circumstances vary, the same things have more or less influence on other men's actions, and consequently those who, by so doing, concur to these actions, ought to be considered sometimes as principal, sometimes as collateral, and sometimes as subaltern causes.

XV. The application of these distinctions and principles is obvious. Supposing every thing else equal, collateral causes ought to be judged alike. But principal causes merit, without

Application of Principles and Distinctions.

doubt, more praise or blame, and a higher degree of recompense or punishment, than subaltern causes. I said, *supposing every thing else equal*; for it may happen, through a diversity of circumstances, which augment or diminish the merit or demerit of an action, that the subaltern cause acts with a greater degree of malice than the principal one, and the imputation is thereby aggravated in respect to the subaltern. Let us suppose, for example, that a person in cool blood assassinates a man, at the instigation of one who was animated thereto by some atrocious injury he had received from his enemy. Though the instigator is the principal author of the murder, yet his action, done in a transport of choler, will be esteemed less heinous than that of the murderer who, calm and serene himself, was the base instrument of the other's passion.

We shall close this chapter with a few remarks; and, 1. Though the distinction of three classes of moral causes in respect to another man's action be in itself very well founded, we must own, nevertheless, that the application thereof to particular cases is sometimes difficult. 2. In dubious cases we should not easily charge, as a principal cause, any other person than the immediate author of the action; we ought to consider those who have concurred thereto, rather as subaltern, or at the most as collateral causes. 3. In fine, it is proper to observe that Puffendorf, whose principles we have followed, settles very justly the distinction of moral causes; but, not having exactly defined these different causes, in the particular examples he alleges, he refers sometimes to one class what properly belonged to another. This has not escaped Mons. Barbeyrac, whose judicious remarks have been here of particular use to us.

CHAPTER XII.

Of the Authority and Sanction of Natural Laws, and 1. of the Good or Evil that naturally and generally follows from Virtue or Vice.

I. WE understand here by the authority of natural laws, the force they receive from the approbation of reason, and especially from their being acknowledged to have God for their author; this is what lays us under a strict obligation of conforming our conduct to them, because of the sovereign right which God has over his creatures. What has been already explained concerning the origin and nature, reality and certainty of those laws, is sufficient, methinks, to establish also their authority. Yet we have still some small matter to say in relation to this subject. The force laws, properly so called, depends principally on their sanction.* This is what gives a stamp, as it were, to their authority. It is, therefore, a very necessary and important point to inquire whether there be really any such thing as a sanction of natural laws, that is, whether they are accompanied with comminations and promises, punishments and rewards.

II. The first reflection that presents itself to our minds is, that the rules of conduct, distinguished by the name of natural laws, are proportioned in such manner to our nature—to the original dispositions and natural desires of our soul—to our constitution—to our wants and actual situation in life—that it evidently appears they were made for us. For, in general, and every thing well considered, the observance of those laws is the only means of procuring a real and solid happiness to individuals as well as to the public; whereas the infraction thereof precipitates men into disorders prejudicial alike to individuals as to the whole species. This is, as it were, the first sanction of natural laws.

III. In order to prove our point, and to establish rightly the state of the question, we must observe, 1. That when the obser-

* See part i. chap. x, sec. 11.

Observance of Law the Source of Happiness.

vance of natural laws is said to be capable alone of forming the happiness of man and society, we do not mean that this happiness can be ever perfect, or superior to all expectation, humanity having no pretense to any thing of this kind; and if virtue itself cannot produce this effect, it is not at all probable that vice has any advantage over her in this respect.

2. As we are inquiring which is the proper rule that man ought to go by, our question is properly reduced to this point, whether, in general, and every thing considered, the observance of natural laws is not the properest and surest means to conduct man to his end, and to procure him the purest, the completest, and the most durable happiness that can possibly be enjoyed in this world; and not only with regard to some persons, but to all mankind—not only in particular cases, but likewise through the whole course of life.

On this footing, it will not be a difficult task to prove, as well by reason as by experience, that the proper and ordinary effect of virtue is really such as has been mentioned; and that vice, or the irregularity of passions, produces a quite opposite effect.

IV. We have already shown, in discoursing of the nature and state of humanity, that, in what manner and light soever we consider the system of humanity, man can neither answer his end, nor perfect his talents and faculties, nor acquire any solid happiness, nor reconcile it with that of his fellow creatures, but by the help of reason; that it ought to be, therefore, his first care to improve his reason, to consult it, and to follow the counsels thereof; that it informs him there are some things which are fit, and others unfit for him; that the former have not all an equal fitness, nor in the same manner; that he ought, therefore, to make a proper distinction between good and evil, in order to regulate his conduct; that true happiness cannot consist in things incompatible with his nature and state; and, in fine, that since the future ought to be equally the object of his views, as the present and past, it is not sufficient, in order to attain certain happiness, to consider merely the present good or evil of each action; but we should likewise recollect what is past, and extend our views to futurity,

in order to combine the whole, and see what ought to be the result thereof in the entire duration of our being. These are so many evident and demonstrable truths. Now, the laws of nature are no more than consequences of these primitive truths; whence it appears that they have necessarily, and of themselves, a great influence on our happiness. And how is it possible to call this in question, after having seen, in the course of this work, that the sole method to discover the principles of those laws is to set out with the study of the nature and the state of man, and to inquire afterwards into what is essentially agreeable to his perfection and happiness?

V. But that which appears so clear and so well established by reason is rendered incontestible by experience. In fact, we generally observe, that virtue—that is, the observance of the laws of nature—is of itself a source of internal satisfaction, and that it is infinitely advantageous in its effects, whether in particular to individuals, or to human society in general; whereas vice is attended with quite different consequences.

Whatever is contrary to the light of reason and conscience cannot but be accompanied with a secret disapprobation of mind, and afford us vexation and shame. The heart is afflicted with the idea of the crime, and the remembrance thereof is always bitter and sorrowful. On the contrary, every conformity to right reason is a state of order and perfection which the mind approves; and we are framed in such a manner that a good action becomes the seed, as it were, of a secret joy, and we always recollect it with pleasure. And, indeed, what can be sweeter or more comfortable than to be able to bear an inward testimony to ourselves that we are what we ought to be; and that we perform what is reasonably our duty, what fits us best, and is most conformable to our natural destination? Whatever is natural is agreeable; and whatever is according to order is a subject of satisfaction and content.

VI. Besides this internal principle of joy which attends the practice of natural laws, we find it produces externally all sorts of good effects. It tends to preserve our health, and to prolong our days; it exercises and perfects the faculties of the mind; it ren-

Different effects of Virtue and Vice.

ders us fit for labor, and for all the functions of domestic and civil life; it secures to us the right use and possession of all our goods and property; it prevents a great number of evils, and softens those it cannot prevent; it procures us the confidence, esteem and affection of other men: whence result the greatest comforts of social life, and the most effectual helps for the success of our undertakings.

Observe on what the public security, the tranquility of families, the prosperity of states, and the absolute welfare of every individual, are founded. Is it not on the grand principles of religion, temperance, modesty, beneficence, justice and sincerity? Whence arise, on the contrary, the greatest part of the disorders and evils that trouble society, and break in upon the happiness of man? Whence, but from the neglect of those very principles? Besides the inquietude and infamy that generally accompanies irregularity and debauchery, vice is likewise attended with a multitude of external evils, such as the enfeebling of the body and mind, distempers and untoward accidents, poverty, very often, and misery, violent and dangerous parties, domestic jars, enemies, continual fears, dishonor, punishments, contempt, hatred, and a thousand crosses and difficulties in every thing we undertake. One of the ancients has very elegantly said, *that malice drinks one half her own poison.*

VII. But if such are the natural consequences of virtue and vice, in respect to the generality of mankind, these effects are still greater among those who, by their condition and rank, have a particular influence on the state of society, and determine the fate of other men. What calamities might not the subjects apprehend, if their sovereigns were to imagine themselves superior to rule, and independent of all law; if, directing every thing to themselves, they were to listen only to their own whims and caprice, and to abandon themselves to injustice, ambition, avarice and cruelty! What good, on the contrary, must not arise from the government of a wise and virtuous man, who, considering himself under a particular obligation of never deviating from the rules of piety, justice, moderation and beneficence, exercises his power with

Confirmation of the foregoing Observations.

no other view than to maintain order within and security without, and places his glory in ruling his subjects uprightly—that is, in making them wise and happy! We need only have recourse to history, and consult experience, to be convinced that these are real truths which no reasonable person can contest.

VIII. This is a truth so generally acknowledged, that all the institutions which men form among themselves for their common good and advantage, are founded on the observance of the laws of nature; and that even the precautions taken to secure the effect of these institutions would be vain and useless, were it not for the authority of those very laws. This is what is manifestly supposed by all human laws in general—by the establishments for the education of youth—by the political regulations which tend to promote the arts and commerce—and by public as well as private treaties. For of what use would all those things be, or what benefit could accrue from them, were we not previously to establish them on justice, probity, sincerity, and the sacred inviolability of an oath, as on their real foundation and basis?

IX. But in order to be more sensibly satisfied of this truth, let any one try, who pleases, to form a system of morality on principles directly opposite to those we have now established. Let us suppose that ignorance and prejudice take the place of knowledge and reason; that caprice and passion are substituted instead of prudence and virtue. Let us banish justice and benevolence from society, and from the commerce of mankind, to make room for unjust self-love, which, calculating every thing for itself, takes no notice of other people's interest, or of the public advantage. Let us extend and apply these principles to the particular condition of human life, and we shall see what must be the result of a system of this kind, were it ever to be received and pass for a rule. Can we imagine it would be able to produce the happiness of society, the good of families, the advantage of nations, and the welfare of mankind? No one has ever yet attempted to maintain such a paradox, so evident and glaring is the absurdity thereof.

X. I am not ignorant that injustice and passion are capable

Answer to Objections.

in particular cases of procuring some pleasure or advantage. But, not to mention that virtue produces much oftener and with greater certainty the same effects, reason and experience inform us that the good procured by injustice is not so real, so durable, nor so pure, as that which is the fruit of virtue. This is because the former, being unconformable to the state of a rational and social being, is defective in its principle, and has only a deceitful appearance.* It is a flower, which, having no root, withers and falls almost as soon as it blossoms.

With regard to such evils and misfortunes as are annexed to humanity, and to which it may be said that virtuous people are exposed as well as others, certain it is, that virtue has here also a great many advantages. In the first place, it is very proper of itself to prevent or remove several of those evils; and thus we observe that wise and sober people actually escape a great many precipices and snares, into which the vicious and inconsiderate are hurried. 2. In cases wherein wisdom and prudence cannot prevent those evils, yet it gives the soul a sufficient vigor to support them, and counterbalances them with sweets and consolations, which contribute to abate in great measure their impression. Virtue is attended with an inseparable contentment, of which nothing can bereave us; and our essential happiness is very little impaired by the transitory, and, in some measure, external accidents that sometimes disturb us.

Surprised I am, says Isocrates, that any one should imagine that those who adhere constantly to piety and justice, must expect to be more unhappy than the unrighteous, and have not a right to promise themselves greater advantages from the gods and men. For my part, I am of opinion that the virtuous alone abundantly enjoy whatever is worthy of our pursuit; and the wicked, on the contrary, are entirely ignorant of their real interests. He that prefers injustice to justice, and makes his sovereign good consist in depriving another man of his property, is like, methinks, to those brute creatures that are caught by the bait. The unjust

* See part i. chap. vi. sec. 3.

The Advantage of Virtue, a Sanction of Natural Laws.

acquisition flatters his senses at first, but he soon finds himself involved in very great evils. Those, on the contrary, who take up with justice and piety, are not only safe for the present, but have likewise reason to conceive good hopes for the remainder of their lives. I own, indeed, that this does not always happen, yet it is generally confirmed by experience. Now, in things whose success cannot be infallibly foreseen, it is the business of a prudent man to embrace that side which most generally turns out to his advantage. But nothing is more unreasonable than the opinion of those, who, believing that justice has something in it more beautiful and more agreeable to the gods than injustice, imagine, nevertheless, that those who embrace the former are more happy than such as abandon themselves to the latter.

XI. Thus, every thing duly considered, the advantage is without comparison on the side of virtue. It manifestly appears that the scheme of the divine wisdom was to establish a natural connection between physical and moral evil, as between the effect and the cause ; and, on the contrary, to entail physical good, or the happiness of man, on moral good, or the practice of virtue ; insomuch that, generally speaking, and pursuant to the original institution of things, the observance of natural laws is as proper and necessary to advance both the public and particular happiness, as temperance and good regimen is naturally conducive to the preservation of health. And as these natural rewards and punishments of virtue and vice are an effect of the divine institution, they may be really considered as a kind of sanction of the laws of nature, which adds a considerable authority to the maxims of right reason.

XII. And yet we must acknowledge, that this first sanction does not as yet seem sufficient to give all the authority and weight of real laws to the counsels of reason. For, if we consider the thing strictly, we shall find that, by the constitution of human things, and by our natural dependance upon one another, the general rule above mentioned is not so fixed and invariable, but it

Difficulties drawn from Exception to the Rule.

admits of divers exceptions, by which the force and effect thereof must certainly be weakened.

1. Experience, in general, shows us that the degree of happiness or misery which every one enjoys in this world, is not always exactly proportioned and measured to the degree of virtue or vice of each particular person. Thus health, the goods of fortune, education, situation of life, and other external advantages, generally depend on a variety of conjunctures, which render their distribution very unequal; and these advantages are frequently lost by accidents, to which all men are equally subject. True it is, that the difference of rank or riches does not absolutely determine the happiness or misery of life; yet agree we must, that extreme poverty, the privation of all necessary means of instruction, excessive labor, afflictions of the mind, and pains of the body, are real evils, which a variety of casualties may bring, as well upon virtuous as other men.

2. Besides this unequal distribution of natural goods and evils, honest men are no more sheltered than others from divers evils arising from malice, injustice, violence, and ambition. Such are the persecutions of tyrants, the horrors of war, and so many other public or private calamities, to which the good and the bad are indiscriminately subject. It even frequently happens that the authors of all those miseries are those who feel least their effects; either because of their extraordinary success and good fortune, or because their insensibility is arrived to that pitch as to let them enjoy, almost without trouble and remorse, the fruit of their iniquities.

3. Again: it is not unusual to see innocence exposed to calumny, and virtue itself becomes the object of persecution. Now in those particular cases in which the honest man falls, as it were, a victim to his own virtue, what force can the laws of nature be said to have, and how can their authority be supported? Is the internal satisfaction, arising from the testimony of the good conscience, able alone to determine man to sacrifice his property, his repose, his honor, and even his life? And yet those delicate conjunctures frequently happen; and the resolution then taken

may have very important and extensive consequences in relation to the happiness and misery of society.

XIII. Such is, indeed, the actual state of things. On the one side, we see that, in general, the observance of natural laws is alone capable of establishing some order in society, and of constituting the happiness of man; but on the other, it appears that virtue and vice are not always sufficiently characterized by their effects, and by their common and natural consequences, to make this order on all occasions prevail.

Hence arises a considerable difficulty against the moral system by us established. All laws, some will say, ought to have a sufficient sanction to determine a reasonable creature to obey, by the prospect of its own good and interest, which is always the *primum mobile* of its actions. Now, though the moral system you have spoken of gives, in general, a great advantage to its followers over those who neglect it, yet this advantage is neither so great nor so sure as to be capable of indemnifying us sufficiently in each particular case for the sacrifices we are obliged to make in the discharge of our duty. This system is not, therefore, as yet, supported with all the authority and force necessary for the end that God proposes; and the character of law, especially of a law proceeding from an all-wise being, requires still a more distinct, surer, and more extensive sanction.

That legislators and politicians have been sensible of this deficiency is manifest, by their endeavoring to supply it in the best manner they are able. They have published a civil law which tends to strengthen the law of nature; they have denounced punishments against vice, promised rewards to virtue, and erected tribunals. This is undoubtedly a new support of justice, and the best method that could be contrived to prevent the fore-mentioned inconveniences. And yet this method does not provide against every disorder, but leaves still a great vacuum in the moral system.

For, 1. There are several evils, as well natural as arising from human injustice, from which all the powers of man cannot preserve even the most virtuous. 2. Human laws are not always

Importance of the Proffered Difficulty.

drawn up in conformity to justice and equity. 3. Let them be supposed never so just, they cannot extend to every case. 4. The execution of those laws is sometimes committed to weak, ignorant or corrupt men. 5. How great soever the integrity of a magistrate may be, still there are many things that escape his vigilance. He cannot see and redress every grievance. 6. It is not an unexampled case that virtue, instead of finding a protector in its judge, meets with an implacable enemy. What resource shall be left to innocence in that case? To whom shall she fly for succor, if the very person who ought to undertake her protection and defense is armed against her?

XIV. Thus the difficulty still subsists; a great difficulty of very great consequence, because on the one side it makes against the plan of a divine providence, and on the other it may contribute to invalidate what we have said in respect to the empire of virtue, and its necessary connection with the felicity of man.

So weighty an objection, that has been started in all ages, deserves we should carefully endeavor to remove it. But the greater and more real it is, the more probably we may presume it has a proper solution. For how is it to be imagined that the Divine Wisdom could have left such an imperfection, such an enigma in the moral order, after having regulated every thing so well in the physical world?

Let us, therefore, see whether some new reflection on the nature and distinction of man will not direct us to a different place from the present life, for the solution we are here inquiring. What has been said concerning the natural consequences of virtue and vice on this earth, already shows us a demi-sanction of the laws of nature. Let us try whether we cannot find an entire and proper one, whose species, degree, time and manner depend on the good will of the legislator, and are sufficient to make all the compensations required by strict justice, and to place in this, as in every other respect, the system of the divine laws above those of human institution.

CHAPTER XIII.

Proofs of the Immortality of the Soul.—That there is a Sanction, properly so called, in respect to Natural Law.

I. THE difficulty we have been speaking of, and which we attempt here to illustrate, supposes, as every one may see, that the human system is absolutely limited to the present life, that there is no such thing as a future state, and, consequently, that there is nothing to expect from the Divine Wisdom in favor of the laws of nature, beyond what is manifested in this life.

Were it possible, on the contrary, to prove that the present state of man is only the commencement of a more extensive system, and, moreover, that the Supreme Being has really been pleased to invest the rules of conduct, prescribed to us by reason, with all the authority of laws, by strengthening them with a sanction, properly so called, we might, in fine, conclude that there is nothing wanting to complete the moral system.

II. The learned are divided in their opinions with respect to these important questions. Some there are who maintain that reason alone affords clear and demonstrative proofs, not only of the rewards and punishments of a future life, but likewise of a state of immortality. Others, on the contrary, pretend that, by consulting reason alone, we meet with nothing but obscurity and uncertainty, and that, so far from finding any demonstration this way, we have not even a probability of a future life.

It is carrying the thing too far, perhaps, on both sides, to reason after this manner. Since the question is concerning a point which depends entirely on the will of the Deity, the best way, undoubtedly, to know this will, would be an express declaration on his side. But, confining ourselves within the circle of natural knowledge, let us try whether, independently of this first method, reason alone can afford us any sure light in relation to this subject, or furnish us with conjectures and presumptions sufficiently strong to infer with any certainty the will of God. With this view, let us investigate a little closer the nature and present state of man,

The Soul Immortal—First Proof.

let us consult the ideas which right reason gives us of the perfection of the Supreme Being, and of the plan he has formed with respect to mankind, in order to know, in fine, the necessary consequences of the natural laws he has been pleased to prescribe.

III. With regard to the nature of man, we are first of all to inquire whether death be really the last term of our existence, and the dissolution of the body be necessarily followed by the annihilation of the soul; or whether the soul is immortal, that is, whether it subsists after the death of the body.

Now the immortality of the soul is so far from being in itself impossible, that reason supplies us with the strongest conjectures that this is in reality the state for which it was designed.

The observations of the ablest philosophers distinguish absolutely the soul from the body, as being in its nature essentially different. 1. In fact, we do not find that the faculties of the mind, the understanding, the will, liberty, with all the operations they produce, have any relation to those of extension, figure and motion, which are the properties of matter. 2. The idea we have of an extended substance as purely passive, seems to be absolutely incompatible with that proper and internal activity which distinguishes a thinking being. The body is not put into motion of itself, but the mind finds it inwardly the principle of its own movements; it acts, it thinks, it wills, it moves the body, it turns its operations as it pleases; it stops, proceeds, or returns the way it went. 3. We observe, likewise, that our thinking part is a simple, single, and invisible being; because it collects our ideas and sensations, as it were, into one point, by understanding, feeling and comparing them, &c., which cannot be done by a being composed of various parts.

IV. The soul seems, therefore, to be of a particular nature, to have nothing in common with gross and material beings, but to be a pure spirit that participates in some measure of the nature of the Supreme Being. This has been very elegantly expressed by Cicero. We cannot find, says he, on earth the least trace of the origin of the soul. For there is nothing mixed or compounded in the mind; nothing that seems to proceed from the earth, water

air or fire. These elements have nothing productive of memory, understanding, reflections; nothing that is able to recall the past, to foresee the future and to embrace the present. We shall never find the source whence man has derived those divine qualities, but by tracing them up to God. It follows, therefore, that the soul is endowed with a singular nature, which is nothing in common with those known and familiar elements. Hence, let the nature of a being that has sensation, understanding, will, and a principle of life, be what it will, this being is surely heavenly, divine, and consequently immortal.

This conclusion is very just. For if the soul be essentially distinct from the body, the destruction of the one is not necessarily followed by the annihilation of the other; and thus far nothing hinders the soul from subsisting, notwithstanding the destruction of its ruinous habitation.

V. Should it be said, that we are not sufficiently acquainted with the intrinsic nature of substances to determine that God could not communicate thought to some portion of matter, I should answer, that we cannot, however, judge of things, but according to their appearance and our ideas; otherwise, whatever is not founded on a strict demonstration must be uncertain, and this would terminate in a kind of Pyrrhonism. All that reason requires is, that we distinguish properly between what is dubious, probable or certain; and since all we know in relation to matter does not seem to have any affinity with the faculties of the soul, and as we even find in one and the other qualities that seem incompatible, it is not prescribing limits to the Divine Power, but rather following the notions that reason has given us to affirm it is highly probable that the thinking part of man is essentially distinct from the body.

VI. But let the nature of the soul be what it will, and be it even, though contrary to all appearance, supposed corporeal; still it would no ways follow that the death of the body must necessarily bring on the annihilation of the soul. For we do not find an instance of any annihilation, properly so called. The body itself, how inferior soever to the mind, is not annihilated by death. It

Second Proof—The Excellence of the Soul.

receives, indeed, a great alteration; but its substance remains always essentially the same, and admits only a change or modification of form. Why, therefore, should the soul be annihilated? It will undergo, if you please, a great mutation; it will be detached from the bonds that unite it to the body, and will be incapable of acting in conjunction with it. But is this an argument that it cannot exist separately, or that it loses its essential quality, which is that of understanding? This does not at all appear; for one does not follow from the other.

Were it, therefore, impossible for us to determine the intrinsic nature of the soul, yet it would be carrying the thing too far, and concluding beyond what we are authorized by fact to maintain, that death is necessarily attended with a total destruction of the soul. The question is, therefore, reducible to this point: is God willing to annihilate, or to preserve, the soul? But if what we know in respect to the nature of the soul does not incline us to think it is destined to perish by death, we shall see, likewise, that the consideration of its excellency is a very strong presumption in favor of its immortality.

VII. And, indeed, it is not at all probable, that an intelligent being, capable of knowing such a multitude of truths, of making so many discoveries, of reasoning upon an infinite number of things, of discerning their proportions, fitness and beauties, of contemplating the works of the Creator, of tracing them up to him, of observing his designs, and penetrating into their causes, of raising itself above all sensible things to the knowledge of spiritual and divine subjects; that has a power to act with liberty and discernment, and to array itself with the most beautiful virtues; it is not, I say, at all probable, that a being adorned with qualities of so excellent a nature, and so superior to those of brute animals, should have been created only for the short space of this life. These considerations made a lively impression upon the ancient philosophers. When I consider, says Cicero, the surprising activity of the mind, so great a memory of what is past, and such an insight into futurity; when I behold such a number of arts and sciences, and such a multitude of discoveries, I be-

lieve, and am firmly persuaded, that a nature which contains so many things within itself, cannot be mortal.

VIII. Again : such is the nature of the human mind, that it is always capable of improvement, and of perfecting its faculties. Though our knowledge is actually confined within certain limits, yet we see no bounds to that which we are capable of acquiring, to the inventions we are able to make, to the progress of our judgment, prudence and virtue. Man is, in this respect, always susceptible of some new degree of perfection and maturity. Death overtakes him before he has finished, as it were, his progress, and when he was capable of proceeding a great deal further. How can it enter, says a celebrated English writer,* into the thoughts of man, that the soul, which is capable of such immense perfections, and of receiving new improvements to all eternity, shall fall away into nothing almost as soon as it is created? Are such abilities made for no purpose? A brute arrives at a point of perfection that he can never pass. In a few years he has all the endowments he is capable of; and were he to live ten thousand more would be the same thing he is at present. Were a human soul thus at a stand in her accomplishments—were her faculties to be full blown, and incapable of further enlargements—I could imagine it might fall away insensibly, and drop at once into a state of annihilation. But can we believe a thinking being, that is in a perpetual progress of improvements, and traveling on from perfection to perfection, after having just looked abroad into the works of its Creator, and made a few discoveries of his infinite goodness, wisdom, and power, must perish at its first setting out, and in the very beginning of its inquiries?

IX. True it is, that most men debase themselves in some measure to an animal life, and have very little concern about the improvement of their faculties. But if those people voluntarily degrade themselves, this ought to be no prejudice to such as choose to support the dignity of their nature; neither does it invalidate what we have been saying in regard to the excellency of

*Spectator.

Third Proof — Natural Dispositions and Desires.

the soul. For, to judge rightly of things, they ought to be considered in themselves, and in their most perfect state.

X. It is, undoubtedly, in consequence of the natural sense of the dignity of our being, and of the grandeur of the end we are designed for, that we naturally extend our views to futurity; that we concern ourselves about what is to happen after our death; that we seek to perpetuate our name and memory, and are not insensible to the judgment of posterity. These sentiments are far from being the illusion of self-love or prejudice. The desire and hope of immortality is an impression we receive from nature. And this desire is so very reasonable in itself, so useful, and so closely connected with the system of humanity, that we may at least infer from it a very probable induction in favor of a future state. How great soever the vivacity of this desire may be in itself, still it increases in proportion as we take more care to cultivate our reason, and as we advance in the knowledge of truth and the practice of virtue. This sentiment becomes the surest principle of noble, generous and public spirited actions; and we may affirm, that, were it not for this principle, all human views would be low, mean and sordid.

All this seems to point out to us clearly, that, by the institution of the Creator, there is a kind of natural proportion and relation between the soul and immortality. For it is not by deceit and illusion that the Supreme Wisdom conducts us to his proposed end. A principle so reasonable and necessary—a principle that cannot but be productive of good effects—that raises man above himself, and renders him not only capable of the sublimest undertakings, but superior to the most delicate temptations; and such as are most dangerous to virtue—such a principle, I say, cannot be chimerical.

Thus every thing concurs to persuade us that the soul must subsist after death. The knowledge we have of the nature of the mind, its excellence and faculties ever susceptible of a higher degree of perfection, the disposition which prompts us to raise ourselves above the present life, and to desire immortality, are all

so many natural inclinations, and form the strongest presumption that such, indeed, is the intention of the Creator.

XI. The clearing up of this first point is of great importance in regard to our principal question, and solves already, in part, the difficulty we are examining. For, when once the soul is supposed to subsist after the dissolution of the body, nothing can hinder us from saying, that whatever is wanting in the present state to complete the sanction of natural law will be executed hereafter, if so agreeable to the Divine Wisdom.

We come now from considering man on the physical side, which opens us already a passage towards finding the object of our present pursuit. Let us see now whether by viewing man on the moral side, that is, as a being capable of rule, who acts with knowledge and choice, and whether, raising ourselves afterwards to God, we cannot discover new reasons and still stronger presumptions of a future life, of a state of rewards and punishments.

Here we cannot avoid repeating part of those things which have been already mentioned in this work, because we are upon the point of considering their entire result; the truth we intend here to establish being, as it were, the conclusion of the whole system. It is thus a painter, after having worked singly upon each part of his piece, thinks it necessary to retouch the whole in order to produce what is called the *total effect and harmony*.

XII. Man, we have seen, is a rational and free agent, who distinguishes justice and honesty, who finds within himself the principles of conscience, who is sensible of his dependence on the Creator, and born to fulfill certain duties. His greatest ornament is reason and virtue; and his chief task in life is to advance in that path, by embracing all the occasions that offer to improve, to reflect and to do good. The more he practices and confirms himself in such laudable occupations, the more he accomplishes the views of the Creator, and proves himself worthy of the existence he has received. He is sensible he can be reasonably called to an account for his conduct, and he approves or condemns himself according to his different manner of acting.

From all these circumstances, it evidently appears that man is

Second Proof.

not confined, like other animals, to a mere physical economy, but that he is included in a moral one which raises him much higher, and is attended with greater consequences. For what appearance or probability is there that a soul, which advances daily in wisdom and virtue, should tend to annihilation, and that God should think proper to extinguish this light in its greatest lustre? Is it not more reasonable to think that the good or bad use of our faculties will be attended with future consequences; that we shall be accountable to our Creator, and finally receive the just retribution we have merited? Since, therefore, this judgment of God does not display itself sufficiently in this world, it is natural to presume that the plan of the Divine Wisdom, with regard to us, embraces a duration of a much greater extent.

XIII. Let us ascend from man to God, and we shall be still further convinced that such in reality is the plan he formed.

If God is willing (a point we have already proved) that man should observe the rules of right reason, in proportion to his faculties and the circumstances he is under, this must be a serious and positive will. It is the will of the Creator, of the Governor of the world, of the sovereign Lord of all things. It is, therefore, a real command, which lays us under an obligation of obeying. It is, moreover, the will of a Being supremely powerful, wise and good; who, proposing always, both with respect to himself and to his creatures, the most excellent ends, cannot fail to establish the means which, in the order of reason and pursuant to the nature and state of things, are necessary for the execution of his design. No one can reasonably contest these principles; but let us see what consequences may be drawn from them.

1. If it actually became the Divine Wisdom to give laws to man, this same wisdom requires these laws should be accompanied with necessary motives to determine rational and free agents to conform thereto in all cases. Otherwise, we should be obliged to say, either that God does not really and seriously desire the observance of the laws he has enacted, or that he wants power or wisdom to procure it.

2. If, through an effect of his goodness, he has not thought

proper to let men live at random, or to abandon them to the capriciousness of their passions; if he has given them a light to direct them, this same goodness must undoubtedly induce him to annex a perfect and durable happiness to the good use that every man makes of this light.

3. Reason informs us afterwards that an all-powerful, all-wise, and all-bountiful being is infinitely fond of order; that the same perfections make him desire that this order should reign among his intelligent and free creatures, and that it was for this very reason he subjected them to laws. The same reasons that induced him to establish a moral order, engage him likewise to procure their observance. It must be, therefore, his satisfaction and glory to render all men sensible of the difference he makes between those who disturb, and those who conform to order. He cannot be indifferent in this respect; on the contrary, he is determined, by the love he has for himself and his perfections, to invest his commands with all the efficacy necessary to render his authority respected. This imports an establishment of future rewards and punishments; either to keep a man within rule as much as possible, in the present state, by the potent motives of hope and fear, or give afterwards an execution worthy of his justice and wisdom to his plan, by reducing every thing to the primitive order he has established.

4. The same principle carries us yet further. For if God be infinitely fond of the order he has established in the moral world, he cannot but approve of those who, with a sincere and constant attachment to this order, endeavor to please him by concurring to the accomplishment of his views; and he cannot but disapprove of such as observe an opposite conduct,* for the former are, as it were, his friends, and the latter declare themselves his enemies.

But the approbation of the Deity imports his protection, benevolence and love; whereas his disapprobation cannot but be attended with quite contrary effects. If so, how can any one imagine that God's friends and enemies will be confounded, and no difference made between them? Is it not much more consonant

* See part ii. chap. x. sec. 7.

Divine Perfections.

to reason to think that the Divine Justice will manifest at length, some way or other, the extreme difference he places between virtue and vice, by rendering finally and perfectly happy those who, by a submission to his will, are become the object of his benevolence, and, on the contrary, by making the wicked feel his just severity and resentment?

XIV. This is what our clearest notions of the perfections of the Supreme Being induce us to judge concerning his views, and the plan he has formed. Were not virtue to meet surely and inevitably with a final recompense, and vice with a final punishment, and this, in a general and complete manner, exactly proportioned to the degree of merit or demerit of each person, the plan of natural laws would never answer our expectations from a Supreme Legislator, whose prescience, wisdom, power, and goodness are without bounds. This would be leaving the laws divested of their principal force, and reducing them to the quality of simple counsels; it would be subverting, in fine, the fundamental part of the system of intelligent creatures, namely, that of being induced to make a reasonable use of their faculties, with a view and expectations of happiness. In short, the moral system would fall into a state of imperfection, which could be reconciled neither with the nature of man, nor with the state of society, nor with the moral perfections of the Deity. It is otherwise, when we acknowledge a future life. The moral system is thereby supported, connected, and finished, so as to leave nothing wanting to render it complete. It is then a plan really worthy of God and useful to man. The Supreme Being does all he ought to do with free and rational creatures to induce them to behave as they should; the laws of nature are thus established on the most solid foundations; and nothing is wanting to bind man by such motives as are most proper to make an impression.

Hence if this plan be without comparison the most beautiful and the best—if it be, likewise, the most worthy of God and the most connected with what we know of the nature, wants and state of man—how can any one doubt of its being that which the Divine Wisdom has actually chosen?

XV. I acknowledge, indeed, that could we find in the present life a sufficient sanction of the laws of nature, in the measure and plenitude above mentioned, we should have no right to press this argument; for nothing could oblige us to search into futurity for an entire unraveling of the divine plan. But we have seen, in the preceding chapter, that though by the nature of things, and even by the various establishments of man, virtue has already its reward, and vice its punishment, yet this excellent and just order is accomplished only in part, and that we find a great number of exceptions to this rule in history and the experience of human life. Hence arises a very puzzling objection against the authority of natural laws. But as soon as mention is made of another life, the difficulty disappears; every thing is cleared up and set to right; the system appears connected, finished, and supported; the Divine Wisdom is justified. We find all the necessary supplements and compensations to redress the present irregularities; virtue acquires a firm and unshaken prop, by furnishing the virtuous man with a motive capable of supporting him in the most dangerous difficulties, and to render him triumphant over the most delicate temptations.

Were this only a simple conjecture, it might be considered rather as a convenient than solid supposition. But we have seen that it is founded also on the nature and excellence of the soul, on the instinct that inclines us to raise ourselves above the present life; and on the nature of man, considered on the moral side, as a creature accountable for his actions, and obliged to conform to a certain rule. When, besides all this, we behold that the same opinion serves to support, and perfectly crowns the whole system of natural law, it must be allowed to be no less probable than it is beautiful and engaging.

XVI. Hence this same opinion has been received more or less at all times and by all nations, according as reason has been more or less cultivated, or as people have inquired closer into the origin of things. It would be an easy matter to allege divers historical proofs, and to produce also several beautiful passages from the ancient philosophers, in order to show that the reasons which

strike us, made the like impressions on the wisest of the Pagans. But we shall be satisfied with observing, that these testimonies, which have been collected by other writers, are not indifferent on this subject; because this shows either the vestiges of a primitive tradition, or the voice of reason and nature, or both; which adds a considerable weight to our argument.

CHAPTER XIV.

That the Proofs we have Alleged have such a Probability and Fitness, as Renders them Sufficient to fix our Belief, and to Determine our Conduct.

I. WE have seen how far our reason is capable of conducting us with regard to the important question of the immortality of the soul, and a future state of rewards and punishments. Each of the proofs we have alleged, has, without doubt, its particular force; but joining to the assistance of one another, and acquiring a greater strength by their union, they are certainly capable of making an impression on every attentive and unprejudiced mind, and ought to appear sufficient to establish the authority and sanction of natural law in as full an extent as we desire.

II. If any one should say that all our reasonings on these subjects are only probability and conjecture, and properly reducible to a plausible reason or fitness, which leaves the thing still at a greater distance from demonstration, I shall agree, if he pleases, that we have not here a complete evidence; yet the probability, methinks, is so very strong, and the fitness so great and so well established, that this is sufficient to make it prevail over the contrary opinion, and, consequently, to determine us.

For we should be strangely embarrassed, if, in every question that arises, we should refuse to be determined by any thing but a demonstrative argument. Most commonly we are obliged to be satisfied with an assemblage of probabilities, which, in a con-

junct consideration; very seldom deceive us, and ought to supply the place of evidence in subjects unsusceptible of demonstration. It is thus that in natural philosophy, in physic, criticism, history, politics, commerce, and generally in all the affairs of life, a prudent man is determined by a concurrence of reasons, which, every thing considered, he judges superior to the opposite arguments.

III. In order to render the force of this kind of proof more obvious, it will not be amiss to explain here at first what we mean by a *plausible reason or fitness*, to inquire afterwards into the general principle on which this sort of reasoning is founded, and to see in particular what constitutes its force when applied to the law of nature. This will be the right way to know the just value of our arguments, and what weight they ought to have in our determinations.

A *plausible reason or fitness* is that which is drawn from the necessity of admitting a point as certain, for the perfection of a system in other respects solid, useful, and well connected, but which would be defective without this point, when there is no reason to suppose that it has any essential effect.* For example, upon beholding a great and magnificent palace, we remark an admirable symmetry and proportion, where all the rules of art, which form the solidity, convenience, and beauty of a building, are strictly observed. In short, all that we see of the building denotes an able architect. May it not, therefore, be reasonably supposed that the foundation, which we do not see, is equally solid and proportioned to the great mass it bears? Can it be imagined that the architect's ability and knowledge should have forsaken him in so important a point? In order to form such a supposition, we should have certain proofs of this deficiency, or have seen that, in fact, the foundation is imperfect; otherwise, we could not presume so improbable a thing. Who is it, that, on a mere metaphysical possibility of the architect's having neglected to lay the foundation, would venture a wager that the thing is really so?

* See chap. viii, sect. 2.

Different Degrees of Fitness.

IV. Such is the nature of fitness. The general foundation of this manner of reasoning is, that we must consider not only what is possible, but what is probable; and that a truth, of itself very little known, acquires a probability by its natural connection with other truths more obvious. Thus natural philosophers do not question that they have discovered the truth, when a hypothesis happily explains all the phenomena; and an event, very little known in history, appears no longer doubtful, when we see it serves for a key and basis to many other indubitable events. It is on this principle, in a great measure, that moral certainty is founded, which is so much used in most sciences, as well as in the conduct of life, and in things of the greatest importance to individuals, families, and to the whole society.

V. But if this manner of judging and reasoning takes place so frequently in human affairs, and is in general founded on so solid a principle, it is still much surer, when we are to reason on the works of God, to discover his plan, and to judge of his views and designs. For the whole universe, with the several systems that compose it, and particularly the system of man and society, are the work of a supreme understanding. Nothing has been done by chance, nothing depends on a blind, capricious, or impotent cause; every thing has been calculated and measured with a profound wisdom. Here, therefore, more than any where else, we have a right to judge that so powerful and so wise an Author has omitted nothing necessary for the perfection of his plan; and that, consistent with himself, he has fitted it with all the essential parts for the design he proposed. If we ought to presume reasonably such a care in an able architect, who is nothing more than a man subject to error, how much more ought we to presume it in a being of infinite wisdom!

VI. What we have been now saying, shows that this fitness is not always of the same weight, but may be more or less strong, in proportion to the greater or less necessity on which it is established. And, to lay down rules on this subject, we may say, in general, 1. That the more we know the views and design of the author; 2. The more we are assured of his wisdom and

power ; 3. The more this power and wisdom are perfect ; 4. The more considerable are the inconveniences that result from the opposite system, and the more they border upon the absurd, the more pressing we find the consequences drawn from this sort of considerations. For then we have nothing to set in opposition to them by way of counterbalance ; and, consequently, it is on that side we are determined by right reason.

VII. These principles are of themselves applicable to our subject, and this in so just and complete a manner, that the reason drawn from probability or fitness, cannot be carried any farther. After what has been said in the preceding chapters, it would be entering into useless repetitions to attempt to prove here all the particulars—the thing sufficiently proves itself. Let us be satisfied with observing that the fitness in favor of the sanction of natural laws is so much the stronger and more pressing, as the contrary opinion throws into the system of humanity an obscurity and confusion which borders very much upon the absurd, if it does not come quite up to it. The plan of the Divine Wisdom becomes in respect to us an insoluble enigma ; we are no longer able to account for anything ; and we cannot tell why so necessary a thing should be wanting in a plan so beautiful in other respects, so useful and so perfectly connected.

VIII. Let us draw a comparison between the two systems, to see which is most conformable to order, most suitable to the nature and state of man, and, in short, most reasonable and worthy of God.

Suppose, on one side, that the Creator proposed the perfection and felicity of his creatures, and, in particular, the good of society. That, for this purpose, having invested man with understanding and liberty, and rendered him capable of knowing his end, of discovering and following the road that alone can conduct him to it, he lays him under a strict obligation of walking constantly in this road, and of ever following the light of reason, which ought always to direct his steps. That, in order to guide him better, he has given him all the principles necessary to serve him as a rule. That this direction and these principles, coming from a powerful,

The System of the Sanction of Natural Law Preferable.

wise and good superior, have all the characteristics of a real law. That this law carries already along with it, even in this life, its rewards and punishments; but that this first sanction being insufficient, God, in order to give to a plan so worthy of his wisdom and goodness its full perfection, and to furnish mankind in all possible cases with necessary motives and helps, has, moreover, established a proper sanction in this respect to natural law, which will be manifested in a future life; and that, attentive to the conduct of man, he proposes to make him give an account of his actions, to recompense virtue, and to punish vice by a retribution exactly proportioned to the merit or demerit of each person.

Let us set now in opposition to this first system the other, which supposes that every thing is limited, in respect to man, to the present life, and that he has nothing to hope or fear beyond this term; that God, after having created man and instituted society, concerns himself no more about them; that, after giving us a power of discerning good and evil by the help of reason, he takes no manner of notice of the use we make thereof, but leaves us in such a manner to ourselves that we are absolutely at liberty to do as we please; that we shall have no account to give to our Creator, and that, notwithstanding the unequal and irregular distribution of the goods of this life, notwithstanding the disorders caused by the malice or injustice of mankind, we have no redress or compensation ever to expect from God.

IX. Can any one say that this last system is comparable to the first? Does it set the divine perfections in so great a light? Is it so worthy of the divine wisdom, bounty and justice? Is it so proper to stem the torrent of vice, and to support virtue in delicate and dangerous conjunctures? Does it render the structure of society as solid, and invest the laws of nature with such an authority, as the Supreme Legislator and the good of humanity require? Were we to choose between two societies, one of which admitted the former system, while the other acknowledged only the latter, is there a prudent man who would not highly prefer to live in the first of these societies?

There is certainly no comparison between these two systems in

These Proofs ought to influence our Conduct.

respect to beauty and fitness; the first is a work of the most perfect reason; the second is defective, and provides no manner of remedy against a great many disorders. Now even this alone point out sufficiently on which side the truth lies; because the business is to judge and reason of the designs and works of the Deity, who does everything with infinite wisdom.

X. Let no one say that, limited as we are, it is temerity to decide after this manner; and that we have too imperfect ideas of the divine nature and perfections, to be able to judge of his plan and designs with any certainty. This reflection, which is in some measure true, and in some cases just, proves too much if applied to our subject, and consequently has no weight. Let us but reflect a little, and we shall find that this thought leads insensibly to a kind of Pyrrhonism, which would be the subversion of all order and economy. For, in fine, there is no medium; we must choose one of the two systems above explained. To reject the first, is admitting the second, with all its inconveniences. This remark is of some importance, and alone is almost sufficient to show us the force of fitness in this case; because not to acknowledge the solidity of this reason is to lay one's self under a necessity of receiving a defective system; a system loaded with inconveniences, and whose consequences are very far from being reasonable.

XI. Such are the nature and force of the fitness, on which the proofs of the sanction of natural laws are established. All that remains now, is to see what impression these proofs united ought to make on our minds, and what influence they should have over our conduct. This is the capital point in which the whole ought to terminate.

1. In the first place, I observe that all that can be said in favor of the sanction of natural laws, were still to leave the question undecided, yet it would be reasonable even in this very uncertainty to act as if it had been determined in the affirmative. For it is evidently the safest side, namely, that in which there is less at all events to lose and more to gain. Let us state the thing as dubious. If there be a future state, it is not only an error not to believe it, but likewise a dangerous irregularity to act as if there

Should Act with Reference to a Future.

were no such thing. An error of this kind is attended with pernicious consequences; whereas, if there is no such thing, the mistake in believing it produces, in general, none but good effects; it is not subject to any inconveniences hereafter, nor does it, generally speaking, expose us to any great difficulties for the time present. Be it, therefore, as it may, and let the case be ever so unfavorable to natural laws, a prudent man will never hesitate which side he is to embrace, whether the observance or the violation of those laws. Virtue will certainly have the preference of vice.

2. But if this side of the question is the most prudent and eligible, even under a supposition of doubt and uncertainty, how much more will it be so, if we acknowledge, as we cannot avoid, that this opinion is at least more probable than the other? A first degree of verisimilitude, or a simple though slight probability, becomes a reasonable motive of determination, in respect to every man who calculates and reflects. And if it be prudent to conduct ourselves by this principle in the ordinary affairs of life, does prudence permit us to deviate from this very road in the most important affairs, such as essentially interest our felicity?

3. But, in fine, if proceeding still further and reducing the thing to its true point, it is agreed that we have actually, if not a strict demonstration of a future life, at least a probability, founded on many reasonable presumptions, and so great a fitness as borders very near upon certainty, it is still more evident that, in the present state of things, we ought to act on this footing, and are not reasonably allowed to form any other rule of conduct. *

XII. Nothing, indeed, is more worthy of a rational being, than to seek for evidence on every subject, and to be determined only by clear and certain principles. But since all subjects are not susceptible thereof, and yet we are obliged to determine, what would become of us, if we were always to wait for a perfect demonstration? In failure of the highest degree of certainty, we must take up with the next to it; and a great probability becomes a sufficient reason of acting, when there is none of equal weight to oppose it. If this side of the question be not in itself evidently

certain, it is at least an evident and certain rule that, in the present state of things, it ought to have the preference.

This is a necessary consequence of our nature and condition. As we have only a limited knowledge, and yet are under a necessity of determining and acting, were it requisite for this purpose to have a perfect certainty, and were we to refuse to accept of probability as a principle of determination, we should be either obliged to determine in favor of the least probable side, and contrary to verisimilitude, (which nobody, methinks, will attempt to maintain,) or we should be forced to spend our days in doubt and uncertainty; to fluctuate continually in a state of irresolution, and to remain ever in suspense, without acting, without resolving upon anything, or without having any fixed rule of conduct; which would be a total subversion of the system of humanity.

XIII. But if it be reasonable, in general, to admit of fitness and probability, as the rule of conduct, for want of evidence, this rule becomes still more necessary and just in particular cases, in which, as hath been already observed, a person runs no risk in following it. When there is nothing to lose if we are mistaken, and a great deal to win if we are not, what can we desire more for a rational motive of acting? Especially, when the opposite side exposes us to very great danger, in case of error; and affords us no manner of advantage, supposing we are in the right. Under such circumstances, there is no room for hesitating; reason obliges us to embrace the safest side; and this obligation is so much the stronger, as it arises from a concurrence of motives of the greatest weight and solidity.

In short, if it be reasonable to embrace this side, even in case of an entire uncertainty, it is still more so when there is some probability in its favor; it becomes necessary, if these probabilities are cogent and numerous; and, in fine, the necessity still increases, if, at all events, this is the safest and most advantageous part. What can any one desire more, in order to produce a real obligation,* according to the principles we have established in regard to the internal obligation imposed by reason?

* See part i. chap. vi. sec. 9 and 13.

Summary of Conclusions.

XIV. Again: This internal and primitive obligation is confirmed by the Divine Will itself, and, consequently, rendered as strong as possible. In fact, this manner of judging and acting being, as we have seen, the result of our constitution, such as the Creator has formed it, this alone is certain proof that it is the will of God we should be directed by those principles, and consider it a point of duty. For whatever, as we have already observed,* is inherent in the nature of man, whatever is a consequence of his original constitution and state, acquaints us clearly and distinctly with the will of the Creator, with the use he expects we should make of our faculties, and the obligations to which he has thought proper to subject us. This is a point that merits great attention. For if we may affirm, without fear of mistake, that the Deity is actually willing that man should conduct himself in this life on the foundation of the belief of a future state, and as having every thing to hope or to fear on his side, according as he has acted justly or unjustly, does there not thence arise a more than probable proof of the reality of this state, and of the certainty of rewards and punishments? Otherwise, we should be obliged to say, that God himself deceives us; because this error was necessary for the execution of his designs as a principle essential to the plan he has formed in respect to humanity. But to speak after this manner of the most perfect Being—of a Being, whose power, wisdom, and goodness, are infinite—would be using a language equally absurd and irreverent. For this very reason, that, as the above mentioned article of belief is necessary to mankind, and enters into the views of the Creator, it cannot be false. Whatever the Deity sets before us as a duty, or as a reasonable principle of conduct, must be certainly true.

XV. Thus every thing concurs to establish the authority of natural laws. 1. The approbation they receive from reason. 2. The express command of God. 3. The real advantages which their observance procures us in this world; and, in fine, the great hopes, and just fears, we ought to have in respect to futurity,

* See Part ii. chap. iv. sec. 5.

according as we have observed or despised those laws. Thus it is that God binds us to the practice of virtue by such strong and so numerous connections, that every man, who consults and listens to reason, finds himself under an indispensable obligation of rendering them the invariable rule of his conduct.

XVI. Some, perhaps, will object that we have been too diffusive, in respect to the sanction of natural laws. True it is, that most of those who have written concerning the law of nature are more concise on this article, and Puffendorf himself does not say much about it. This author, without absolutely excluding the consideration of a future life from this science, seems, nevertheless, to confine the law of nature within the bounds of the present life as tending only to render us sociable. And yet he acknowledges that man is naturally desirous of immortality, and that this has induced heathens to believe the soul immortal; that this belief is likewise authorized by an ancient tradition concerning the goddess of revenge: to which he adds, that, in fact, it is very probable God will punish the violation of the laws of nature; but that there is still a great obscurity in this respect, and nothing but revelation can put the thing out of doubt.

But were it even true, that reason affords us nothing but probabilities in regard to this question, yet we must not exclude from the law of nature all considerations of a future state, especially if these probabilities are so very great as to border upon certainty. The above article enters necessarily into the system of this science, and forms a part thereof, so much the more essential, that, were it not for this, the authority of natural law would be weakened, as we have already demonstrated; and it would be difficult (to say nothing more) to establish, on any solid grounds, several important duties, which oblige us to sacrifice our greatest advantages to the good of society, or to the support of equity and justice. Necessary, therefore, it was to examine, with some care, how far our natural light may lead us, in respect to this question, and to show the force of the proofs that our reason affords us, and the influence those proofs ought to have over our conduct.

True it is, as we have already observed, that the best way to know the will of God, in this respect, would be an express declaration on his part. But if reasoning, as mere philosophers, we have not been able to make use of so decisive a proof, nothing can hinder us, as Christian philosophers, from availing ourselves of the advantage we have from revelation, in order to strengthen our conjectures. Nothing, indeed, can be a better argument, that we have reasoned and conjectured right, than the positive declaration of the Deity on this important point. For, since it appears in fact, that God is willing to recompense virtue, and to punish vice, in another life, it is no longer possible to doubt of what we have advanced—namely, that this is extremely conformable to his wisdom, goodness and justice. The proofs we have drawn from the nature of man, from God's designs in his favor, from the wisdom and equity with which he governs the world, and from the present state of things, are not a work of the imagination, or an illusion of self-love; no, they are reflections dictated by right reason. And when revelation comes up to their assistance, it sets them in full evidence what already had been rendered probable by the sole light of nature.

But the reflection we have here made, regards not only the sanction of natural laws, but it may also be extended to the other parts of this work. It is to us great pleasure to see that the principles we have laid down are exactly those that the Christian religion adopts for its basis, and on which the whole structure of religion and morality is raised. If, on one side, this remark serves to confirm us in these principles, by assuring us that we have hit upon the true system of nature; on the other, it ought to dispose us to have an infinite esteem for a revelation which perfectly confirms the law of nature, and converts moral philosophy into a religious and popular doctrine—a doctrine founded on facts, and in which the authority and promises of the Deity manifestly intervene in the fittest manner to make an impression upon man. This happy agreement between natural and revealed light is equally honorable to both.

THE
PRINCIPLES OF POLITIC LAW.

BEING A SEQUEL TO THE PRINCIPLES OF THE LAW OF NATURE.

CHAPTER I.

General and Preliminary Reflections.

I. WHAT has hitherto been said concerning the rights and duties of man, relates to the natural and primitive society, established by God himself, independent of human institutions. We must now treat of civil society, or the body politic, which is deservedly esteemed the completest of societies, and to which the name of state has been given by way of preference.

II. For this purpose, we shall repeat the substance of some principles established in the preceding pages, and give a further explication of others relative to this subject.

1. Human society is originally, and in itself, a state of equality and independence.

2. The institution of sovereignty destroys this independence.

3. This institution does not subvert natural society.

4. On the contrary, it tends to strengthen and cement it.

III. To form, therefore, a just idea of civil society, we must call it natural society, modified by covenants and regulated by law, to the end that, by this means, mankind may attain with greater certainty that happiness to which they all aspire.

IV. The institution of civil societies produces some new relations amongst mankind; I mean such as subsist between those different bodies or communities which are called states or nations, from which the law of nations and civil polity are derived.

V. In fact, so soon as states are formed, they acquire, in some measure, personal properties; and, consequently, we may attribute the same rights and obligations to them as are attributed to individuals, considered as members of society. And, indeed, it is evident that, if reason imposes certain duties on individuals towards each other, it prescribes likewise those very same rules of conduct to nations, (which are composed only of men,) in the intercourse which they may have with each other.

VI. We may, therefore, apply to kingdoms and nations the several maxims of natural law hitherto explained; and the same law, which is called natural, when speaking of individuals, is distinguished by the name of the law of nations, when applied to men, considered as members forming those different bodies known by the name of states or nations.

VII. To enter into this subject, we must observe that the natural state of nations, with respect to each other, is that of society and peace. This society is likewise a state of equality and independence, which establishes between them a right of equality, by which they are obliged to have the same regard for each other. The general principle, therefore, of the law of nations, is nothing more than the general law of sociability, which obliges nations to the same duties as are prescribed to individuals.

VIII. Thus the law of natural equality, that which prohibits our injuring any person, and commands the reparation of damage, the law likewise of beneficence, of fidelity to our engagements, &c., are as binding upon nations as individuals.

IX. It is a point of some importance to attend to the nature and origin of the law of nations, such as hath been here explained; for it follows thence that the law of nations is of equal authority with the law of nature itself, of which it constitutes a part, and that they are equally sacred and venerable, since both have the Deity for their author.

X. There cannot even be any other law of nations really obligatory and intrinsically invested with the force of a law. For, since all nations are, in respect to each other, in a state of perfect equality, it is beyond contradiction, that, if there be any common

law between them, it must necessarily have God, their common sovereign, for its author.

XI. As to what concerns the tacit consent or customs of nations, on which some doctors establish a law of nations, they cannot of themselves produce a real obligation. For from this only, that several nations have behaved towards each other for some time after a certain manner, it does not follow that they have laid themselves under a necessity of acting constantly so for the future, and much less, that every other nation is obliged to conform to this custom.

XII. All that can be said is, that, when once a particular usage or custom is introduced between nations that have a frequent intercourse with each other, these nations are, and may reasonably be, supposed to submit to this usage, unless they have in express terms declared that they will not conform to it any longer; and this is all the effect that can be attributed to the received usages between nations.

XIII. This being premised, we may distinguish two sorts of laws of nations: one necessary, which is obligatory of itself, and no way differs from the law of nature; the other arbitrary and free, founded only on a kind of tacit convention, and deriving all its force from the law of nature, which commands us to be faithful to our engagements.

XIV. What has been said concerning the law of nations, suggest several important reflections; among others, that, since the law of nations is in reality nothing else but the law of nature itself, there is but one and the same rule of justice for all mankind, to nations as well as individuals. And the nation which violates this law is guilty of as great a crime as individuals; perhaps a greater, since national wrong is attended with more unhappy consequences.

XV. The principles established enable us to form a just idea of that science, so necessary to the directors of nations, which is called policy. By policy, therefore, is meant that knowledge or ability by which a statesman provides for the preservation, security, prosperity, and glory of the nation which he governs,

Policy and Prudence.

without doing any injury to other people, but rather consulting their advantage as much as possible.

XVI. In short, that which is called prudence, in the management of private business, is distinguished by the name of policy in the administration of public affairs; and as that mischievous ability by which a person seeks his own advantage to the detriment of others, and which is called artifice or cunning, is deserving of censure in individuals, it is equally so in public men, where policy aims at procuring the advantage of their own nation, to the prejudice of what they owe to other people, in virtue of the laws of humanity and justice.

XVII. Among human institutions there is none more considerable than civil society; and, consequently, a knowledge of its nature is important both to magistrate and people.

CHAPTER II.

Of the Real Origin of Civil Societies.

I. CIVIL society is nothing more than the union of a multitude of people collected together, and united by common accord and covenants, for the conservation of themselves, and the attainment of the happiness to which they aspire.

II. Whenever the question concerning the origin of civil society is started, it may be considered in two different ways; for either I am asked my opinion concerning the origin of governments in reality and in fact, or else in regard to the right of congruity and fitness; that is, what are the reasons which should induce mankind to renounce their natural liberty, and to prefer a civil state to that of nature? Let us see first what can be said in regard to the fact.

III. As the establishment of society and civil government is almost coeval with the world, and there are but very few records extant of those first ages, nothing can be advanced with certainty concerning the real origin of civil societies. All that political writers say upon this subject is reduced to conjectures, that have more or less probability.

IV. Some attribute the origin of civil societies to paternal authority. These observe that all the ancient traditions inform us that the first men lived a long time; by this longevity, joined to the multiplicity of wives, which was then permitted, a great number of families saw themselves united under the authority of one grandfather; and, as it is difficult for a society at all numerous to maintain itself without a supreme authority, it is natural to imagine that their children, accustomed from their infancy to respect and obey their fathers, voluntarily resigned the supreme command into their hands, so soon as they arrived to a full maturity of reason.

V. Others suppose that the fear and diffidence which mankind had of one another, was their inducement to unite together under

Origin of Civil Societies.

a chief, in order to shelter themselves from those mischiefs which they apprehended. From the iniquity of the first men, say they, proceed war, as also the necessity, to which they were reduced, of submitting to masters, by whom their rights and privileges might be determined.

VI. Some there are, in fine, who pretend that the first beginnings of civil societies are to be attributed to ambition, supported by force or abilities. The most dexterous, the strongest, and the most ambitious, reduced, at first, the simplest and weakest into subjection; those growing states were afterwards insensibly strengthened by conquests, and by the concurrence of such as became voluntary members of those societies.

VII. Such are the principal conjectures of political writers in regard to the origin of societies; to which let us add a few reflections.

The first is, that, in the institution of societies, mankind in all probability thought rather of redressing the evils which they had experienced, than of procuring the several advantages resulting from laws, from commerce, from the arts and sciences, and from all those other improvements so frequently mentioned in history.

2. The natural disposition of mankind, and their general manner of acting, do not by any means permit us to refer the institution of all governments to a general and uniform principle. More natural it is to think that different circumstances gave rise to different states.

3. We behold, without doubt, the first image of government in democratic society, or in families; but there is all the probability in the world that it was ambition, supported by force or abilities, which first subjected the several fathers of families under the dominion of a chief. This appears very agreeable to the natural disposition of mankind, and seems further supported by the manner in which the Scripture speaks of Nimrod,* the first king mentioned in history.

4. When such a body politic was once framed, several others

* See Genesis, c. x. ver. 8, and seq.

joined themselves to it afterwards through different motives; and other fathers of families, being afraid of insults or oppression from those growing states, determined to form themselves into like societies, and to choose to themselves a chief.

5. Be this as it may, we must not imagine that those first states were such as exist in our days. Human institutions are ever weak and imperfect in their beginnings; there is nothing but time and experience that can gradually bring them to perfection.

The first states were in all probability very small. Kings in those days were only a kind of chieftains, or particular magistrates, appointed for deciding disputes, or for the command of armies. Hence we find, by the most ancient histories, that there were sometimes several kings in one and the same nation.

VIII. But to conclude, whatever can be said in regard to the original of the first governments, consists, according to what we have already observed, in mere conjectures, that have only more or less probability. Besides, this is a question rather curious than useful or necessary; the point of importance, and that particularly interesting to mankind, is to know whether the establishment of government and of supreme authority was really necessary, and whether mankind derive from it any considerable advantages. This is what we call the right of congruity or fitness, and what we are going now to examine.

CHAPTER III.

Of the right of congruity or fitness with regard to the Institution of Civil Society, and the necessity of a Supreme Authority; of Civil Liberty: that it is far preferable to Natural Liberty, and that the State is, of all Human Conditions, the most perfect, the most reasonable, and consequently the Natural State of Man.

I. WE are here to inquire, whether the establishment of civil society and of a supreme authority was necessary to mankind, or whether they could not live happy without it; and whether sovereignty, whose original is owing, perhaps, to usurpation, ambition and violence, does not include an attempt against the natural equality and independency of man. These are, without doubt, questions of importance, and merit the utmost attention.

II. I grant, at first setting out, that the primitive and original society which nature has established amongst mankind, is a state of equality and independence; it is likewise true, that the law of nature is that to which all men are obliged to conform their actions; and, in fine, it is certain that this law is in itself most perfect, and the best adapted for the preservation and happiness of mankind.

III. It must likewise be granted that if mankind, during the time they lived in natural society, had exactly conformed to nature's laws, nothing would have been wanting to complete their happiness, nor would there have been any occasion to establish a supreme authority upon earth. They would have lived in a mutual intercourse of love and beneficence, in a simplicity without state or pomp, in an equality without jealousy, strangers to all superiority but that of virtue, and to every other ambition than that of being disinterested and generous.

IV. But mankind were not long directed by so perfect a rule; the vivacity of their passions soon weakened the force of nature's law, which ceased now to be a bridle sufficient for them, so that they could no longer be left to themselves, thus weakened and blinded by their passions. Let us explain this a little more particularly.

V. Laws are incapable of contributing to the happiness of society, unless they be sufficiently known. The laws of nature cannot be known otherwise to man, than as he makes a right use of his reason; but as the greatest part of mankind, abandoned to themselves, listen rather to the prejudices of passion than to reason and truth, it thence follows that, in the state of natural society, the laws of nature were known but imperfectly, and consequently that, in this condition of things, man could not lead a happy life.

VI. Besides, the state of nature wanted another thing, necessary for the happiness and tranquility of society: I mean a common judge, acknowledged as such, whose business it is to decide the differences that every day arise between individuals.

VII. In this state, as every one would be supreme arbiter of his own actions, and would have a right of being judge himself both of the laws of nature and of the manner in which he ought to apply them, this independence and excessive liberty could not but be productive of disorder and confusion, especially in cases where there happened to be any clashing of interests or passions.

VIII. In fine, as in the state of nature, no one had a power of enforcing the execution of the laws, nor an authority to punish the violation of them. This was a third inconveniency of the state of primitive society, by which the efficacy of natural laws was almost entirely destroyed. For, as men are framed, the laws derive their greatest force from the coercive power, which, by exemplary punishments, intimidates the wicked, and balances the superior force of pleasure and passion.

IX. Such were the inconveniences that attended the state of nature. By the excessive liberty and independence which mankind enjoyed, they were hurried into perpetual troubles; for which reason, they were under an absolute necessity of quitting this state of independence, and of seeking a remedy against the evils of which it was productive; and this remedy they found in the establishment of civil society and a sovereign authority.

X. But this could not be obtained without effecting two things equally necessary; the first was to unite together by means of a

Natural and Civil Liberty.

more particular society; the second, to invest this society with the power necessary to the preservation of order and peace.

XI. By these means, they remedied the inconveniences above mentioned. The promulgation of laws acquainted the people with the laws which they ought to follow. We then cease to be judges in our own cause, our passions are checked, and we are compelled to contain ourselves within the limits of the regard and respect which we owe to others.

XII. This might be sufficient to prove the necessity of government, and of a supreme authority in society, and to establish the right of congruity or fitness in this respect; but as it is a question of the utmost importance, as mankind have a particular interest in being well acquainted with their state, as they have a natural passion for independence, and generally frame false notions of liberty, it will not be improper to continue our reflections on this subject.

XIII. Let us, therefore, examine into natural and civil liberty; let us afterward endeavor to show that civil liberty is far preferable to that of nature, and, consequently, that the state which it produces is, of all human condition, the most perfect, and, to speak with exactness, the true natural state of man.

XIV. The greater part of mankind are strangers to the advantages of civil society, or, at least, they give no attention to the beauty or excellence of this salutary institution. On the other hand, magistrates often lose sight of the end for which they were appointed; and, instead of regarding the supreme authority as established for no other purpose than the maintenance and security of the liberty of mankind, they frequently direct it to a different end, and to their own private advantage.

XV. Natural liberty is the right, which nature gives to all mankind, of disposing of their persons and property, after the manner they judge most convenient to their happiness, on condition of their acting within the limits of the law of nature, and of their not abusing it to the prejudice of their fellow men. To this right of liberty there is a reciprocal obligation corresponding, by which the law of nature binds all mankind to respect the liberty

of other men, and not to disturb them in the use they make of it, so long as they do not abuse it.

XVI. The laws of nature are, therefore, the rule and measure of liberty; and, in the primitive and natural state, mankind have no liberty but what the laws of nature give them; for which reason it is proper to observe here, that the state of natural liberty is not that of an entire independence. In this state, men are, indeed, independent with regard to one another, but they are all in a state of dependence on God and his laws. Independence, generally speaking, is a state unsuitable to man, because by his very nature he holds it of a superior.

XVII. Liberty and independence of any superior are two very distinct things, which must not be confounded. The first belongs essentially to man, the other cannot suit him. Human liberty is of itself not inconsistent with dependence upon society, and submission to its laws; on the contrary, it is the power of society, and the protection which men derive from it, that forms the greatest security of their liberty.

XVIII. This will be still better understood, by recollecting what we have already settled, when speaking of natural liberty. We have shown that the restrictions which the law of nature makes to the liberty of man, far from diminishing or subverting it, on the contrary, constitutes its perfection and security. The end of natural laws is not so much to restrain the liberty of man, as to make him act agreeably to his real interests; and, moreover, as these very laws are a check to human liberty, in whatever may be of pernicious consequence to others, it secures, by these means, to all mankind, the highest and the most advantageous degree of liberty they can reasonably desire.

XIX. We may, therefore, conclude, that in the state of nature, man could not enjoy all the advantages of liberty, but inasmuch as this liberty was made subject to reason, and the laws of nature were the rule and measure of the exercise of it. But if it be true in fact, that the state of nature was attended with the several inconveniences already mentioned—inconveniences which almost effaced the impression and force of natural laws—it is a plain con-

Civil Liberty nothing more than Natural Liberty.

sequence, that natural liberty must have greatly suffered thereby, and that by not being restrained within the limits of the law of nature, it could not but degenerate into licentiousness, and reduce mankind to the most frightful and the most melancholy of situations.

XX. As they were perpetually divided by contentions, the strongest oppressed the weakest; they possessed nothing with tranquillity; they enjoyed no repose; and what we ought particularly to observe is, that all these evils were owing chiefly to that very independence which mankind were possessed of, in regard to each other, and which deprived them of all security of the exercise of their liberty; insomuch that by being too free, they enjoyed no freedom at all; for freedom there can be none, when it is not subject to the direction of laws.

XXI. If it be, therefore, true, that the civil state gives a new force to the laws of nature—if it be true, also, that the establishment of sovereignty secures, in a more effectual manner, the observance of those laws—we must conclude, that the liberty which man enjoys in this state is far more perfect, more secure, and better adapted to procure his happiness, than that which he was possessed of in the state of nature.

XXII. True it is, that the institution of government and sovereignty is a considerable limitation to natural liberty; for man must renounce that power of disposing of his own person and actions—in a word, his independence. But what better use could mankind make of their liberty than to renounce every dangerous tendency it had, in regard to themselves, and to preserve no more of it than was necessary to procure their own real and solid happiness?

XXIII. Civil liberty is, therefore, nothing more than natural liberty, so far restrained by human laws (and no further) as is necessary for the preservation of human rights, and the maintenance of peace and order in society.

XXIV. This liberty is attended with two considerable advantages which natural liberty had not. The first is, the right of insisting that the magistrate shall confine himself within the limits

of the power conferred upon him, and use it agreeably to the purposes for which he was intrusted with it. The second is, the security which the people should reserve to themselves for the preservation of the right above named.

XXV. We, therefore, conclude that civil liberty is natural liberty, regulated by such laws as are necessary for the maintenance of justice, and attended with the right of insisting that the government shall make the proper use of its authority, and a security that this right shall be respected.

XXVI. Since civil liberty, therefore, is far preferable to that of nature, we may safely conclude that the civil state, which procures this liberty to mankind, is of all human states the most perfect, the most reasonable, and, of course, the true natural state of man.

XXVII. And, indeed, since man, by his nature, is a free and intelligent being, capable of discovering his state by himself, as well as its ultimate end, and of taking the necessary measures to attain it, it is properly in this point of view that we must consider his natural state; that is, the natural state of man must be that which is most agreeable to his nature, to his constitution, to reason, to the good use of his faculties and to his ultimate end; all which circumstances perfectly agree with the civil state. In short, as the institution of government and supreme authority brings men back to the observance of the laws of nature, and consequently to the road of happiness, it makes them return to their natural state, from which they had strayed by the bad use which they made of their liberty.

XXVIII. The reflections we have here made on the advantages which men derive from government, deserve very great attention.

1. They are extremely proper for removing the false notions which most people have upon this subject; as if the civil state could not be established but in prejudice to their natural liberty; and as if government had been invented only to satisfy the ambition of designing men, contrary to the interest of the rest of the community.

2. They inspire mankind with a love and respect for so salutary

 Constitution of States.

an institution, disposing them thus to submit voluntarily to whatever the civil society requires of them, from a conviction that the advantages thence derived are very considerable.

3. They may likewise tend greatly to increase the love of one's country, the first seeds of which nature herself has implanted, as it were, in the hearts of all mankind, in order to promote, as it most effectually does, the happiness of society. Sextus Empiricus relates, "that it was a custom among the ancient Persians, upon the death of a king, to pass five days in a state of anarchy, as an inducement to be more faithful to his successor, from the experience they acquired of the inconveniences of anarchy, of the many murders, robberies, and every other mischief with which it is pregnant."

XXIX. Mankind renounced their independence and natural liberty, and established civil governments in order to escape the evils with which they were afflicted, and in hopes that they should meet with solid happiness. We thus see, that by civil liberty, mankind acquired a right of insisting that the power of the magistrate should be used agreeably to the design with which it was conferred, which was to render them wise and virtuous, and thereby promote their real felicity. Whatever we have said concerning the advantage of the civil state, in preference to that of nature, supposes this state in its due perfection; and that both magistrates and people discharge their duty to each other.

 CHAPTER IV.

Of the Essential Constitution of States, and of the Manner in which they are Formed.

I. AFTER treating of the original of civil societies, the natural order of our subject leads us to inquire into the essential constitution of states, that is, into the manner in which they are formed, and the internal frame of those surprising structures.

II. From what has been said in the preceding chapter, it fol-

laws, that the only effectual method which mankind could employ in order to screen themselves from the evils with which they were afflicted in the state of nature, and to procure to themselves all the advantages wanting to their security and happiness, must be drawn from man himself, and from the assistance of society.

III. For this purpose it was necessary that a multitude of people should unite in so particular a manner, that their preservation must depend on each other, to the end that they may remain under a necessity of mutual assistance, and, by this junction of strength and interests, be able not only to repel the insults against which each individual could not guard so easily, but also to contain those who should attempt to deviate from their duty, and to promote more effectually their common advantage. Let us explain more particularly how this could be effected.

IV. Two things were necessary for this purpose.

1. It was necessary to unite forever the wills of all the members of the society in such a manner, that from that time forward they should never desire but one and the same thing, in whatever relates to the end and purpose of society. 2. It was requisite afterwards to establish a supreme power, supported by the strength of the whole body, (by which means they might overawe those who should be inclinable to disturb the peace,) and to inflict a present and sensible evil on such as should attempt to act contrary to the public good.

V. It is from this union of wills and strength that the body politic or state results; and without it we could never conceive a civil society. For let the number of confederates be ever so great, if each man was to follow his own private judgment in things relating to the public good, they would only embarrass one another; and the diversity of inclinations and judgments, arising from the levity and natural inconstancy of man, would soon demolish all concord, and mankind would thus relapse into the inconveniences of the state of nature. Besides, a society of that kind could never act long in concert, and for the same end not maintain itself in that harmony, which constitutes its whole strength, without a superior power, whose business it is to serve

State Defined.

as a check to the inconstancy and malice of man, and to oblige each individual to direct all his actions to the public utility.

VI. All this is performed by means of covenants; for this union of wills in one and the same person could never be so effected as to actually destroy the natural diversity of inclinations and sentiments; but it is done by an engagement, which every man enters into, of submitting his private will to that of a single person, or of an assembly; insomuch that every resolution of this person or assembly concerning things relative to the public security or advantage, must be considered as the positive will of all in general, and of each in particular.

VII. With regard to the union of strength which produces the sovereign power, it is not formed by each man's communicating physically his strength to a single person, so as to remain utterly weak and impotent; but by a covenant or engagement, whereby all in general and each in particular oblige themselves to make no use of their strength, but in such a manner as shall be prescribed to them by the person or assembly on whom they have, with one common accord, conferred the supreme authority.

VIII. By this union of the body politic under one and the same chief, each individual acquires, in some measure, as much strength as the whole society united. Suppose, for instance, there are a million of men in the commonwealth: each man is able to resist this million, by means of their subjection to the body politic, who keeps them all in awe, and hinders them from hurting one another. This multiplication of strength in the body politic, resembles that of each member in the human body; take them asunder, and their right is no more; but by their mutual union the strength of each increases, and they form altogether a robust and animated body.

IX. The state may be defined a society, by which a multitude of people unite together under an organized government, in order to find, through its protection and care, the happiness to which they naturally aspire. The definition which Tully gives, amounts nearly to the same. *Multitudo juris consensu, et utilitatis communione sociata.* A multitude of people united together by a common interest, and by common laws, to which they submit with one accord.

X. The state, considered as a body, or moral person, has certain rights, privileges and possessions distinct from each citizen; to which neither each citizen, nor many, nor even altogether, can pretend.

XI. It is, moreover, this union of several persons in one body, produced by the concurrence of the wills and the strength of every individual in one and the same person, that distinguishes the state from a multitude. For a multitude is only an assemblage of several persons, each of whom has his own will, with the liberty of judging, according to his own notions, of whatever is proposed to him, and of determining as he pleases; for which reason they can be said to have only one will. Whereas, the state is a body, or a society, animated by one only soul, which directs all its motions, and makes all its members act after a constant and uniform manner, with a view to one and the same end, namely, the public utility.

XII. But it will be here objected, that if the union of the will and of the strength of each member of the society in the government destroy neither the will nor the natural force of each individual, if they always remain in possession of it, and if they are able to employ it against the government, what does the force of the state consist in? and what is it that constitutes the security of this society? I answer, that two things contribute to maintain the state.

1. The first is the engagement which individuals have made to support it—an engagement which derives considerable force from divine authority and their own interest.

2. As to vicious and ill-disposed minds, on whom these motives make no impression, the strength of government consists chiefly in the fear of punishment.

XIII. Since it is the power of the government which preserves peace and order in society, and the permanence of government depends upon the affection of the people, it follows that the support of the people is the real strength of all governments.

XIV. It is equally clear that the prudent exercise of power, pursuant to the end for which it was designed, and within its legitimate bounds, constitutes at the same time the happiness of the people and the security of the government.

Covenants of the Social Compact.

XIV. Tracing the principles here established, in regard to the formation of states, &c., were we to suppose that a multitude of people, who had lived hitherto independent of each other, wanted to establish a civil society, we shall find a necessity for different covenants and for a general decree.

1. The first covenant is that by which each individual engages with all the rest to join forever in one body, and to regulate with one common consent whatever regards their preservation and their common security. Those who do not enter into this first engagement remain excluded from the new society.

2. There must afterwards be a decree made for settling the form of government; otherwise, they could never take any fixed measures for promoting effectually and in concert the public security and welfare.

3. In fine, when once the form of government is settled, there must be another covenant, whereby, after having fixed upon one or more persons to be invested with the power of governing, those on whom this supreme authority is conferred, engage to consult most carefully the common security and advantage; and the others promise fidelity and allegiance to the sovereign. This last covenant includes a submission of the strength and will of each individual to the will of the head of the society, as far as the public good requires; and thus it is that a regular state and perfect government are formed.

XVI. What we have hitherto delivered may be further illustrated by the account we have in history concerning the foundation of the Roman state. At first, we behold a multitude of people who flock together with a view of settling on the banks of the Tiber; afterwards, they consult about what form of government they shall establish, and, the party for monarchy prevailing, they confer the supreme authority on Romulus.

XVII. And though we are strangers to the original of most states, yet we must not imagine that what has been here said concerning the manner in which civil societies are formed is a mere fiction. For, since it is certain that all civil societies had a beginning, it is impossible to conceive how the members of which they

are composed could agree to live together, dependent on a supreme authority, without supposing the covenants above mentioned.

XVIII. And yet all political writers do not explain the origin of states after our manner. Some pretend that states are formed merely by the covenant of the people with one another, by which each man enters into an engagement with all the rest not to resist the action of the government, upon the condition that the rest on their part submit to the same engagement. They pretend that there is no promise on the part of the government to confine itself to the legitimate exercise of authority within the prescribed limits.

XIX. The reason why these writers give this explication is plain. Their design is to support arbitrary and unlimited power, and to deprive the people of any means of withdrawing their allegiance, when the government becomes destructive of the ends for which it was instituted. For this purpose it was necessary to free the supreme power from all restraint of compact or covenant.

XX. Though it is of the utmost importance to mankind to support authority, and defend it against the attempts of the lawless and unruly, yet we must not deny evident truths, or refuse to acknowledge a covenant, in which there is manifestly a mutual promise of performing things, to which they were not before obliged.

XXI. When I submit voluntarily to a government, I promise allegiance to it, on condition that it will protect me; the government, on the other hand, promises me protection, on condition that I obey the laws. It is, therefore, evident that there must be a mutual engagement.

XXII. If the obligation of allegiance is founded merely on the mutual covenant between the people, by which such man engages for the sake of the rest to obey the supreme power, on condition that the rest do the same for his sake, it is evident that, at this rate, every citizen makes the force of his engagement depend on the execution of that of every other member of society; and, consequently, if one refuses to obey the supreme power, all the rest stand released from their allegiance.

CHAPTER V.

Of Sovereignty.

I. SOVEREIGNTY has been defined to be the right of commanding in the last resort.

II. We may now add that it is the right of commanding civil society in the last resort, which right the members of this society have conferred on one and the same person, with a view to preserve order and security in the commonwealth, to promote the general welfare, and secure the blessings of liberty.

III. I say, in the first place, that sovereignty is the right of commanding civil society in the last resort, to show that the nature of sovereignty consists chiefly in two things.

The first is, the right of commanding the members of the society—that is, of directing their actions with authority, or with a power of compelling.

The second is, that this right ought to be that of commanding in the last resort in such a manner that every private person be obliged to submit, without a power left to any man of resisting. Otherwise, if this authority was not superior to every other upon earth, it could establish no order or security in the commonwealth, though these are the ends for which it was established.

IV. In the second place, I say, that it is a right conferred on a person, and not on a man, to denote that this person may be not only a single man, but likewise a multitude of men, united in council, and forming only one will, by means of a plurality of suffrages, as we shall more particularly explain hereafter.

V. Thirdly, I say, to one and the same person, to show that sovereignty can admit of no share or partition, that there is no sovereign at all when they are many, because there is no one who commands then in the last resort; and none of them being obliged to give way to the other, their competition must necessarily throw every thing into disorder and confusion.

VI. I add, in fine, to procure their own happiness, &c., in order to point out the end of sovereignty—that is, the welfare of the people. When rulers once lose sight of this end—when they pervert it to their private interests or caprices—sovereignty then degenerates into tyranny, and ceases to be a legitimate authority.

VII. The members of a state are called citizens.

VIII. Now, a person becomes a member of a state in two ways: either by an express or tacit covenant.

IX. If by an express covenant, the thing admits of no difficulty. But, with regard to a tacit covenant, we must observe, that the first founders of states, and all those who afterwards became members thereof, are supposed to have stipulated that their children and descendants should, at their coming into the world, have the right of enjoying those advantages which are common to all the members of the state; provided, nevertheless, that these descendants, when they attain to the use of reason, be on their part willing to submit to the government, and to acknowledge its authority.

X. I said, provided the descendants acknowledge the authority of the government; for the stipulation of the parents cannot, in its own nature, have the force of subjecting the children against their will to an authority to which they would not of themselves choose to submit. Hence the authority of the government over the children of the members of the state, and the right, on the other hand, which these children have to the protection of the government, are founded on mutual consent.

XI. Now, if the children of members of the state, upon attaining to the years of discretion, are willing to live in the place of their parentage, or in their native country, they are by this very act supposed to submit themselves to the power that governs the state; and, consequently, they ought to enjoy, as members of that state, the advantages naturally arising from it.

XII. Besides, it is a maxim which has been ever considered as a general law of government, that whosoever merely enters upon the territories of a state, and by a much stronger reason, those who are desirous of enjoying the advantages which are to be

Several Relations in the State.

found there, are supposed to renounce their natural liberty, and to submit to the established laws and government, so far as the public and private safety require. And if they refuse to do this, they may be considered as enemies, in this sense, at least, that the government has a right to expel them from the country; and this is, likewise, a tacit covenant, by which they make a temporary submission to the government.

XIII. Some make no distinction between the terms citizens and members of the civil state, but I think it is better to distinguish them. The first should be applied only to those who share in all the advantages and privileges of the association, and who are properly members of the state, either by birth, or in some other manner. All the rest are rather inmates, strangers, or temporary inhabitants, than members. As to women, the title of member is applicable to them only inasmuch as they enjoy certain rights, in virtue of their dependence on their domestic governor, who is properly a member of the state; but all this depends on the laws and particular customs of each government.

XIV. To proceed: members, besides the general relation of being united in the same civil society, have many other particular relations, which are reducible to two principal ones.

The first is, when they compose particular bodies or corporations.

The second is, when they are intrusted with the administration of the government.

XV. These particular bodies are called companies, societies, communities.

XVI. They are either public, such as are established by the authority and sanction of the government, or private, such as are formed by private individuals.

XVII. Again: these private bodies are either lawful or unlawful. The former are those which, having nothing in their nature contrary to good order and authority of the government, are supposed to be approved by the state, though they have not received any formal sanction. With respect to unlawful bodies, we mean not only those whose members unite for the open com-

mission of crime, but, likewise, all other combinations, whose tendency is to corrupt the public morals and defeat the ends of civil society.

XVIII. Those members of society who are intrusted with a portion of the administration, have, in consequence thereof, particular relations to the rest of community.

CHAPTER VI.

Of the immediate source and foundation of Sovereignty.

I. **THOUGH** what has been said in the fourth chapter, concerning the structure of states, is sufficient to show the original and source of sovereignty, as well as its real foundation, yet, as this is one of those questions on which political writers are greatly divided, it will not be amiss to examine it somewhat more particularly; and what remains still to be said upon this subject will help to give us a more complete idea of the nature and end of sovereignty.

II. When we inquire here into the source of sovereignty, our intent is to know the nearest and immediate source of it. Now, it is certain that the supreme authority, as well as the title on which this power is established, and which constitutes its right, is derived immediately from the very covenants which constitute civil society, and give birth to government.

III. Nature has made us all of the same species, all equal, all free and independent of each other; in short, she was willing that those on whom she has bestowed the same faculties should have all the same rights. It is, therefore, beyond all doubt, that, in this primitive state of nature, no man has of himself an original right of commanding others, or any title to sovereignty.

IV. There is none but God alone that has, in consequence of his nature and perfections, a natural, essential and inherent right of giving laws to mankind, and of exercising an absolute sov-

Sovereignty of both Divine and Human Origin.

ereignty over them. The case is otherwise between man and man : they are in their own nature as independent of one another as they are dependent on God. This liberty and independence is, therefore, a right naturally belonging to man, of which it would be unjust to deprive him against his will.

V. But if this be the case, and there is yet a supreme authority subsisting amongst mankind, whence can this authority arise, unless it be from the compacts or covenants which men have made amongst themselves upon this subject? For as we have a right of transferring our property to another by a covenant, so, by a voluntary submission, a person may convey to another, who accepts of the renunciation, the natural right he had of disposing of his liberty and natural strength.

VI. It must, therefore, be agreed, that sovereignty resides originally in the people, and in each individual, with regard to himself; and that it is the transfer and union of the several rights of individuals in some person, or assemblage of persons, which constitutes and produces what is called sovereignty in government. For example, when the Romans chose Romulus and Numa for their kings, they conferred upon them by this very act the sovereignty which those princes were not possessed of before, and to which they certainly had no other right than what was derived from the election of the people.

VII. Nevertheless, though it be evident that the immediate original of sovereignty is owing to human covenants, yet nothing can hinder us from affirming, with good ground, that it is of divine as well as human right.

VIII. And, indeed, right reason having made it plainly appear, after the multiplication of mankind, that the establishment of civil societies and of a supreme authority was absolutely necessary for the order, tranquility, and preservation of the species, it is as convincing a proof that this institution is agreeable to the designs of Providence, as if God himself had declared it to mankind by a positive revelation. And since God is essentially fond of order, he is doubtless willing that there should be a supreme authority upon earth, which alone is capable of procuring and

supporting that order amongst mankind, by enforcing the observance of the laws of nature.

IX. There is a beautiful passage of Cicero to this purpose. *Nothing is more agreeable to the supreme Deity that governs this universe than civil societies lawfully established.*

X. Power is lodged in the hands of magistrates, that they may maintain, agreeably to the views of Deity, both order and peace, and thus procure the felicity of mankind.

XI. Magistrates are, therefore, under the strongest obligation to use their authority pursuant to the views and purposes with which they were entrusted with it, and agreeably to the intention of Deity, that is, the happiness of the people, by enacting wise laws for the advancement of justice and the prevention of wrong.

XII. This, without doubt, is sufficient to make us look upon the original government as sacred. But there are political writers who carry the thing further, and maintain that it is God who confers immediately the supreme power on rulers, without any intervention or concurrence of men.

XIII. For this purpose they make a distinction between the cause of the state and the cause of sovereignty. They confess, indeed, that states are formed by covenants, but they insist that God himself is the immediate cause of the sovereignty. According to their notions, the people who choose to themselves a ruler, do not by this act confer the supreme authority upon him, they only point out the person whom heaven is to entrust with it. Thus the consent of the people to the dominion of one or more persons, may be considered as a channel through which the supreme authority flows, but is not its real source.

XIV. The principal argument which these writers adopt is, that, as neither each individual amongst a number of free and independent people, nor the whole collected multitude, are in any wise possessed of the supreme power, they cannot confer it upon any member of the body. But this argument proves nothing. It is true, that neither each member of the society, nor the whole multitude collected, are formally invested with the supreme author-

 Objections Answered.

ity, such as we behold it in a regularly constituted government; but it is sufficient that they possess it virtually; that is, that they have within themselves all that is necessary to enable them, by the concurrence of their free will and consent, to produce it in the formation of civil society.

XV. Since every individual has a natural right of disposing of his natural freedom according as he thinks proper, why should he not have a power of transferring to another that right which he has of directing himself? Now is it not manifest, that if all the members of this society agree to transfer this right to one of their fellow members, this cession will be the nearest and immediate cause of sovereignty? It is, therefore, evident that there are in each individual the seeds, as it were, of the supreme power. The case is here very near the same as in that of several voices collected together, which by their union produces a harmony that was not to be found separately in each.

XVI. But it will be here objected, that the scripture itself says, that every man ought to be subject to the supreme powers, because they are established by God.* I answer with Grotius, that men have established civil societies, not in consequence of a divine ordinance, but of their voluntary motion, induced by the experience they had of the incapacity which separate families were under, of defending themselves against the insults and attacks of human violence. Thence (he adds) arises the civil power, which St. Peter, for this reason, calls a *human* power,† though in other parts of scripture it bears the name of a divine institution, because God has approved of it as an establishment useful to mankind.

XVII. The other arguments in favor of the opinion we have been here refuting do not even deserve our notice. In general, it may be observed, that never were more wretched reasons produced upon this subject, as the reader may be easily convinced by reading Puffendorf on the Law of Nature and Nations, who, in the chapter corresponding to this, gives these arguments at length, and fully refutes them.

* Rom. xiii. 1. † Ep. i. chap. ii. ver. 13.

XVIII. Let us, therefore, conclude that the opinion of those who pretend that God is the immediate cause of sovereignty, has no other foundation than that of adulation and flattery, by which, in order to render the authority of sovereigns more absolute, they have attempted to render it independent of all human compact, and dependent only on God. But were we even to grant that princes hold their authority immediately of God, yet the consequences which some political writers want to infer, could not be drawn from this principle.

XIX. For since it is most certain that God could never entrust rulers with this supreme authority but for the good of society in general, as well as of individuals, the exercise of this power must necessarily be limited by the very intention which the Deity had in conferring it on them; insomuch that the people would still have the same right of refusing to obey a ruler, who, instead of concurring with the views of the Deity, would, on the contrary, endeavor to cross and defeat them, by rendering his people miserable, as we shall prove more particularly hereafter.

CHAPTER VII.

Of the Essential Characteristics of Sovereignty—Its Modifications, Extent and Limits.

I. OF THE CHARACTERISTICS OF SOVEREIGNTY.

I. SOVEREIGNTY we have defined a right of commanding in the last resort in civil society, which right the members of this society have conferred upon some person or assembly, with a view of maintaining order and security in the commonwealth. This definition shows us the principal characteristics of the power that governs the state; and this is what it will be proper to explain here in a more particular manner.

Characteristics of Sovereignty.

II. The first characteristic, and that from which all the others flow, is its being a supreme and independent power—that is, a power that judges in the last resort of whatever is susceptible of human direction, and relates to the welfare and advantage of society; insomuch that this power acknowledges no other superior power on earth.

III. It must be observed, however, that when we say the civil power is of its own nature supreme and independent, we do not mean thereby that it does not depend, in regard to its original, on the human will.* All that we would have understood is, that when once this power is established, it acknowledges no other upon earth superior or equal to it; and, consequently, that whatever it ordains in the plenitude of its power cannot be reversed by any other human will as superior to it.

IV. That in every government there should be such a supreme power is a point absolutely necessary; the very nature of the thing requires it; otherwise, it is impossible for it to subsist. For, since powers cannot be multiplied to infinity, we must necessarily stop at some degree of authority superior to all other. And let the form of government be what it will, monarchical, aristocratical, democratical, or mixed, we must always submit to a supreme decision; since it implies a contradiction to say that there is any person above him who holds the highest rank in the same order of beings.

V. The second characteristic, which is a consequence of the former, is that a sovereignty, as such, is not accountable for the exercise of its authority, nor liable to punishment; for both suppose a superior.

VI. There are two ways of being accountable.

One, as to a superior, who has a right of reversing what has been done, if he does not find it to his liking, and even of inflicting some punishment; and this is inconsistent with the idea of a sovereignty.

The other, as to an equal, whose approbation we are desirous

* See above, chap. iv. &c., where we have proved the contrary.

of having ; and in this sense a sovereignty may be accountable without any absurdity. And even they who have a right idea of honor, endeavor by such means to acquire the approbation and esteem of mankind, by letting all the world see that they act with prudence and integrity. But this does not imply any dependence.

VII. I have said that a sovereignty, as such, is neither accountable nor punishable. By this it is not meant that a government may not forfeit its right to the respect and obedience of the people which have established it. For it is past all doubt that, when a government becomes destructive of the ends for which it was instituted, and uses its powers to a quite contrary purpose, it becomes an enemy to the state, and the sovereignty returns to the nation, which has a right to form new institutions, laying their foundations on such principles, and organizing its powers in such form, as will secure their safety and happiness for the future.

VIII. Nor is it to be supposed that the persons who exercise the supreme power in a government are less amenable to the laws than the other members of the state. Indeed, their position strengthens the duty of obedience to their own laws. Natural equity seems to require that they should studiously conform to the rules which they have formally and solemnly pronounced essential to the preservation of civil society.

IX. The power of example is proverbial. People seldom obey a precept which the author does not exemplify in his own conduct. On the other hand, the obedience of the legislator to the laws which he enacts, is an effectual means of promoting that virtue among the people.

Would you your public laws should sacred stand?
 Lead first the way, and act what you command.
 The crowd grow mild and tractable to see
 The author governed by his own decree.

X. But to proceed: this sovereignty, such as we have described it, resided originally in the people. But when they have once transferred it, they cannot, without contradiction, be supposed to continue masters of it.

Absolute and Limited Sovereignty.

XI. When the people establish a government, and confer upon it the supreme power—that is, the power to determine what measures are necessary to preserve civil society, to promote its prosperity, to punish those who disturb its peace or plot its destruction, to settle differences among its members, and to enforce the judgments which it pronounces—it is evident that they part with their sovereignty.

XII. This proposition is made still clearer by another consideration: The government may enact laws to which the people are opposed; yet there is no question that they are bound to obey them, and that the government has the right to enforce obedience, and was instituted for that purpose.

XIII. It may be asked, if the people have parted with their sovereignty by establishing a government, what control have they over it, and in what does their power consist? We answer, that they still retain the power to alter or abolish it at their pleasure.

XIV. The following principles, which neither favor tyranny nor encourage rebellion, we consider as well established:

1. By establishing a government, the people part with their sovereignty, and transfer it to the government.

2. But it does not follow, from the people's having conferred the supreme power in such a manner, that they have reserved to themselves in no case the right of resuming it.

3. This reservation is sometimes explicit; but there is always a tacit one, the effect of which discloses itself, when the government becomes destructive of the ends for which it was instituted.

XV. Though it is absolutely necessary that there should be a supreme and independent authority in the state, there is, nevertheless, an essential difference with regard to the manner in which those who are intrusted with this power exercise it. In some countries, the ruler governs as he thinks proper; in others, he is obliged to follow some fixed and constant rule, from which he is not allowed to deviate. Hence arises the distinction between absolute and limited sovereignty.

2. OF ABSOLUTE SOVEREIGNTY.

XVI. Absolute sovereignty is, therefore, nothing else but the right of governing the state as the ruler thinks proper, according as the present situation of affairs seems to require, and without being obliged to consult any person whatever, or to follow any fixed and perpetual rules.

XVII. Upon this head we have several important reflections to make.

1. In order to form a just idea of absolute power, we must trace it to its principle. In the state of nature, every man has an absolute right to act after what manner he thinks most conducive to his happiness, and without being obliged to consult any person whatever; provided, however, he does nothing contrary to the laws of nature. Consequently, when a multitude of men unite together, in order to form a state, this body hath the same liberty in regard to matters in which the public good is concerned.

2. When, therefore, the whole body of the people confer the sovereignty upon a ruler—with this extent and absolute power which originally resided in themselves, and without adding any particular limitation to it—we call that sovereignty absolute.

3. Things being thus constituted, we must not confound an absolute power with an arbitrary, despotic and unlimited authority. For, from what we have here advanced concerning the origin and nature of absolute sovereignty, it manifestly follows that it is limited, from its very nature, by the intention of those who conferred it on the ruler, and by the very laws of God. This is what we must explain more at large.

XVIII. The end which mankind proposed to themselves in renouncing their natural independence, and establishing government and sovereignty, was doubtless to redress the evils under which they labored, and to secure their happiness. If so, how is it possible to conceive that those who, with this view, granted absolute power to the ruler, should have intended to give him an arbitrary and unlimited authority, so as to entitle him to gratify

Limitations Considered.

his caprice and passions to the prejudice of their lives, property and liberty? On the contrary, we have shown above that the civil state necessarily empowers the people to insist upon the authority of government being used for their advantage, and according to the purpose for which it was conferred.

XIX. It must, therefore, be acknowledged, that it never was the intention of the people to confer absolute sovereignty upon a ruler, but with this express condition, that the public good should be the supreme law to direct him; consequently, so long as he acts with this view, he is authorized by the people; but, on the contrary, if he makes use of his power merely to ruin and destroy the people, he acts entirely of his own head, and not in virtue of the power with which he was entrusted.

XX. Still further, the very nature of the thing does not allow absolute power to be extended beyond the bounds of public utility; for absolute sovereignty cannot confer a right upon the government which the people had not originally in themselves. Now, before the establishment of civil society, surely no man had a right of injuring either himself or others; consequently, absolute power cannot give the government a right to oppress the people.

XXI. In the state of nature, every man was absolutely master of his own person and actions; provided he confined himself within the limits of the law of nature. Absolute power is formed only by the union of all the rights of individuals in the person of the sovereign; of course, the absolute power of the government is confined within the same bounds as those by which the absolute power of individuals was originally limited.

XXII. But I go still further, and affirm that, supposing even a nation had been really willing to grant their ruler an arbitrary and unlimited power, this concession would of itself be void and of no effect.

XXIII. No man can divest himself so far of his liberty as to submit to an arbitrary ruler, who is to treat him absolutely according to his fancy. This would be renouncing his own life, which he is not master of; it would be renouncing his duty, which is never permitted; and if thus it be with regard to an individual

who should make himself a slave, much less hath an entire nation that power which is not to be found in any of its members.

XXIV. By this, it appears most evident, that all sovereignty, how absolute soever we suppose it, hath its limits; and that it can never imply an arbitrary power in the ruler of doing whatever he pleases, without any other rule or reason than his own despotic will.

XXV. For how, indeed, should we attribute any such power to the creature, when it is not to be found in the Supreme Being himself? His absolute dominion is not founded on a blind will; his sovereign will is always determined by the immutable rules of wisdom, justice and beneficence.

XXVI. In short, the right of commanding, or sovereignty, ought always to be established ultimately on a power of doing good, otherwise it cannot be productive of a real obligation; for reason cannot approve or submit to it; and this is what distinguishes empire and sovereignty from violence and tyranny. Such are the ideas we ought to form of absolute sovereignty.

3. OF LIMITED SOVEREIGNTY.

XXVII. Though absolute power, considered in itself, and such as we have now represented it, implies nothing odious or unlawful, yet the experience of all ages has taught mankind that it is not the form of government which suits them best, nor the fittest for procuring tranquility and happiness.

XXVIII. The possession of power cannot change the nature of man. Rulers, however exalted their stations, still belong to the human family—are subject to the prejudices and susceptible of the passions which are common to humanity.

XXIX. Again: they who exercise sovereign power are exposed to temptations unknown to private people. Few have courage or virtue sufficient to moderate their passions, when they find they may do as they list. The people have, therefore, great reason to fear that an unlimited authority will turn out to their prejudice, and that if they do not reserve some security to themselves against the abuse of power, they are sure to feel its effects.

Written Constitution.

XXX. Influenced by these considerations, many nations have set bounds to the power of their governments, prescribed the manner in which they shall be administered, and specifically defined the subjects of legislation.

XXXI. This has given rise to written constitutions, by which the people not only control, restrain and limit the powers of government, but impose instructions upon the exercise of their own sovereignty, and fix the boundaries within which their own legislative and civil power shall be confined.

XXXII. When the people, by a body of fundamental law, forbid legislation upon certain subjects, it is evident that no legislative proceedings can be had, and no law passed in the country of the kind specified in the constitution. Though the people should call for the enactment of such laws, and the legislature pass them, it would be the duty of the courts to declare them null and void, and until the frame of the government itself is changed, they would be of no force whatever.

XXXIII. The advantages of a written constitution are :

1. The protection which it affords to minorities and individuals against the oppression and injustice of majorities, or of the government, as such. It distinguishes a republic from a democracy. The former is a limited, the latter an absolute government. A republic is a free country, a democracy is a despotism. In a republic, the sovereignty is acknowledged to reside in the people, but is restrained in its exercise by a constitution which marks the boundaries of the authority of the people, as a government, that is, as a sovereign, and secures against that authority, beyond those boundaries, the rights and freedom of individuals. In a democracy, the sovereignty is also acknowledged to reside in the people, but no limitations are imposed upon its exercise, and the individual, or the minority, has no security or refuge from the power of the majority, and of course the government is absolute and despotic.

XXXIV. 2. When individuals enter into the social relation, voluntarily and without a deliberate and express understanding in reference to the powers of government, it is impossible to determine how much authority is lodged in the hands of the state.

Hence arise perpetual and interminable controversies respecting the extent of the civil power, that is, the authority of the community over individuals. By written constitutions, these controversies may be more or less avoided. In framing and adopting them, the people expressly ordain and determine the boundaries of the civil power, and mark out the sphere within which its action shall be confined. All questions respecting the authority of the government over individuals can be settled by an appeal to the written instrument.

CHAPTER VIII.

Of the Essential parts of Sovereignty.

I. In order to finish this first part, nothing remains but to treat of the different parts of sovereignty. We may consider sovereignty as an assemblage of various rights and different powers, which, though distinct, are nevertheless conferred for the same end; that is to say, for the good of the society, and which are essentially necessary for this same end. These different rights and powers are called the essential parts of sovereignty.

II. To be convinced that these are the parts of sovereignty, we need only attend to its nature and end.

The end of sovereignty is the preservation, the tranquility, and the happiness of the state, as well within itself as with respect to its interests abroad; so that sovereignty must include every thing that is essentially necessary for procuring this two-fold end.

III. 1. As this is the case, the first part of sovereignty, and that which lies at the foundation of all the rest, is the legislative power, which establishes general and perpetual rules, which are called *laws*. By these means every one knows how he ought to

conduct himself for the preservation of peace and good order, what share he retains of his natural liberty, and how he ought to exert his rights so as not to disturb the public tranquility.

It is by means of laws that we contrive so nobly to unite the prodigious diversity of sentiments and inclinations observable among men, and establish that concert and harmony so essential to society, since they direct the different actions of individuals to the general good and advantage. These laws should contain nothing opposite to the divine laws, whether natural or revealed.

IV. 2. To the legislative we must join the coercive power; that is to say, the right of ordaining punishments against those who molest the community by their irregularities, and the power of actually inflicting them. Without this power, the establishment of civil society and of laws would be absolutely useless, and we could not propose to live in peace and safety. But that the dread of punishments may make a sufficient impression on the minds of the people, the right of punishing must extend to the power of inflicting the greatest of natural evils, which is death; otherwise, the dread of punishment would not be always capable of counterbalancing the force of pleasure and the impulse of passion. In a word, the people have a stronger interest to observe than to violate the law. Thus the vindictive power is certainly the highest degree of authority which one man can hold over another.

V. 3. It is necessary for the preservation of peace that the government should be invested with the power to take cognizance of the different quarrels between citizens, and to decide them in the last resort; as also to examine the accusations laid against any person, in order to absolve or punish him conformably to the laws. This is what we call jurisdiction, or the judiciary power.

VI. 4. As the prosperity and happiness of a country and the stability of its institutions are greatly influenced by the intelligence of the people, it is necessary that the government should be invested with the power of establishing public schools.

VII. 5. After having secured public repose at home, it is necessary to provide against aggression from abroad. In conse-

quence of this, the government should be empowered to raise troops sufficient for the protection and defense of the state, and to make peace when it shall be judged proper.

VIII. 6. Hence arises the right of contracting public engagements, of making treaties with foreign states, and obliging citizens to observe them.

IX. 7. Since public affairs cannot be conducted by a single person, the chief executive must be authorized to appoint ministers and other subordinate magistrates, whose business it is to take care of the public welfare, and transact the affairs of the government in its name and under its authority.

X. The administration of the government, both in times of peace and war, is attended with heavy expenses. The government must, therefore, have the right to levy taxes, which province should never exceed the public necessities.

CHAPTER IX.

Of the Various Forms of Government.

I. NATIONS have been sensible that it was essential to their happiness and safety to establish some form of government. They have all agreed on this point, that it was necessary to institute a supreme power, to whose will every thing should be ultimately submitted.

II. But the more the establishment of a supreme power is necessary, the more important is the choice of the person invested with that high dignity. Hence it is that, in regard to this article, nations are extremely divided, having entrusted the supreme power in different hands, according as they judged it most conducive to their safety and happiness; neither have they taken this step without making several systems and restrictions, which

Forms of Government either Simple or Compound.

may vary greatly. This is the origin of the different forms of government.

III. There are, therefore, various forms of government, according to the different persons in whom the sovereignty immediately resides, and according as it is inherent either in a single person, or in a single assembly, more or less compounded; and this is what forms the constitution of the state.

IV. These different forms of government may be reduced to two general classes, namely, to the simple forms, or to those which are compounded or mixed.

V. There are three simple forms of government: democracy, aristocracy, and monarchy.

VI. Some nations, more diffident than others, have placed the sovereign power in the multitude itself, that is to say, in the heads of families, assembled and met in council; and such governments are called popular or democratic.

VII. Other nations, of a bolder turn, passing to the opposite extreme, have established monarchy, or the government of a single man. Thus monarchy is a state in which the supreme power, and all the rights essential to it, reside in a single person, who is called king, monarch, or emperor.

VIII. Others have kept a due medium between these two extremes, and lodged the whole sovereign authority in a council composed of select members; and this is termed an aristocracy, or the government of the nobles.

IX. Lastly, other nations have been persuaded that it was necessary, by a mixture of the simple forms, to establish a compound government, and, making a division of the sovereignty, to intrust the different parts of it to different hands; to temper, for example, monarchy with aristocracy, and at the same time to give the people a share in the sovereignty; this may be executed in different ways.

X. In order to have a more particular knowledge of the nature of these different forms of government, we must observe that, as in democracies, the sovereign is a moral person, formed by the union of all the heads of families into a single will, there

are three things absolutely necessary for the constitution of this form of government.

1. That there be a certain place and regulated times for deliberating in common on the public affairs; the members of the sovereign council might assemble at different times, or places, whence factions would arise which would interrupt the union essential to the state.

2. It must be established for a rule, that the plurality of suffrages shall pass for the will of the whole; otherwise, no affair could be determined, it being impossible that a great number of people should be always of the same opinion. We must, therefore, esteem it the essential quality of a moral body that the resolution of a majority shall pass for the will of the whole.

3. Lastly, it is essential that magistrates should be appointed to convene the people in extraordinary cases, to dispatch ordinary affairs in their name, and to see that the decrees of the assembly be executed; for, since the sovereign council cannot always sit, it is evident that it cannot take the direction of every thing itself.

XI. With regard to aristocracies, since the sovereignty resides in the council or senate, composed of the principal men of the nation, it is absolutely necessary that the conditions essential to the constitution of a democracy, and which we have above mentioned, should also concur to establish an aristocracy.

XII. Further, aristocracy may be of two kinds, either by birth, and hereditary, or elective. The aristocracy by birth, and hereditary, is that which is confined to a certain number of families, to which birth alone gives right, and which passes from parents to their children, without any choice, and to the exclusion of all others. On the contrary, the elective aristocracy is that in which a person arrives at the government by election only, and without receiving any right from birth.

XIII. In a word, it may be equally observed of aristocracies and democracies, that, whether in a popular state or in a government of the nobles, every citizen, or every member of the supreme council, has not the supreme power, nor even a part of it; but

Mixed or Compound Governments.

this power resides either in the general assembly of the people, convened according to the laws, or in the council of the nobles; for it is one thing to have a share in the sovereignty, and another to have the right of suffrage in an assembly invested with the sovereign power.

XIV. As to monarchy, it is established when the whole body of the people confer the sovereign power on a single person.

XV. There is, therefore, this essential difference between monarchy and the two other forms of government, that, in democracies and aristocracies, the actual exercise of the sovereign authority depends on the concurrence of certain circumstances of time and place; whereas in monarchy, at least when it is simple and absolute, the prince can give his orders at all times and in all places. *It is Rome wherever the emperor resides.*

XVI. Another remark, which very naturally occurs on this occasion, is, that in a monarchy, when the king orders any thing contrary to justice and equity, he is certainly to blame, because in him the civil and natural wills are the same thing. But when the assembly of the people, or a senate, form an unjust resolution, only those citizens or senators who carried the point render themselves really accountable, and not those who were of the opposite sentiment. Let this suffice for the simple forms of government.

XVII. As to mixed or compound governments, they are established, as we have observed, by the concurrence of the three simple forms, or only of two; when, for example, the king, the nobles, and the people, or only the two latter, share the different parts of the sovereignty between them, so that one administers some parts of it, and the others the remainder. This mixture may be made various ways, as we observe in most republics.

XVIII. It is true, to consider sovereignty in itself, and in the height of plenitude and perfection, all the rights which it includes ought to belong to a single person, or to one body, without any partition; so that there be but one supreme will to govern the people. There cannot, properly speaking, be several sovereigns in a state, who shall act as they please, independently of each

other. This is morally impossible, and besides, would manifestly tend to the ruin and destruction of society.

XIX. But this union of the supreme power does not hinder the whole body of the nation, in which this power originally resides, from regulating the government by a fundamental law, in such a manner as to commit the exercise of the different parts of the supreme power to different persons or bodies, who may act independently of each other, in regard to the rights committed to them, but still subordinate to the laws from which those rights are derived.

XX. And provided the fundamental laws, which establish this species of partition in the sovereignty, regulate the respective limits of the different branches of the legislature, so that we may easily see the extent of their jurisdiction; this partition produces neither a plurality of sovereigns, nor an opposition between them, nor an irregularity in the government.

XXI. In a word, in this case, there is, properly speaking, but one sovereign, who in himself is possessed of the fullness of power. There is but one supreme will. This sovereign is the body of the people, formed by the union of all the orders of the state; and this supreme will is the very law by which the whole body of the nation makes its resolutions known.

XXII. They who thus share the sovereignty among them are properly no more than the executors of the law; since it is from the law itself that they hold their power. And as these fundamental laws are real covenants, or what the civilians call *pacta conventa*, between the different orders of the republic, by which they mutually stipulate that each shall have such a particular part of the sovereignty, and that this shall establish the form of government, it is evident that by these means each of the contracting parties acquires a right not only of exercising the power granted to it, but also of preserving that original right.

XXIII. Such party cannot even be divested of its right in spite of itself, and by the will of the rest, so long at least as it conducts itself in a manner conformable to the laws, and not manifestly opposite to the public welfare.

Sovereignty in the Different Forms.

XXIV. In a word, the constitution of those governments can be changed only in the same manner and by the same methods by which it was established, that is to say, by the unanimous concurrence of all the contracting parties, who have fixed the form of government by the original contract.

XXV. This constitution of the state by no means destroys the union of a moral body, composed of several persons, or of several bodies, really distinct in themselves, but joined by a fundamental law in a mutual engagement.

XXVI. From what has been said on the nature of mixed or compound governments, it follows that in all such states the sovereignty is limited; for as the different branches are not committed to a single person, but lodged in different hands, the power of those who have a share in the government is thereby restrained; and, as they are thus a check to each other, this produces such a balance of authority as secures the public weal and the liberty of individuals.

XXVII. But with respect to simple governments: in these the sovereignty may be either absolute or limited. Those who are possessed of the sovereignty, exercise it sometimes in absolute and sometimes in a limited manner, by fundamental laws, which prescribe bounds to the sovereign with regard to the manner in which he ought to govern.

XXVIII. On this occasion it is expedient to observe, that all the accidental circumstances which can modify simple monarchies or aristocracies, and which, in some measure, may be said to limit sovereignty, do not, for that reason, change the form of government, which still continues the same. One government may partake somewhat of another, when the manner in which the sovereign governs seems to be borrowed from the form of the latter; but it does not, for that reason, change its nature.

XXIX. For example, in a democratic state the people may intrust the care of several affairs either to a principal member, or to a senate. In an aristocracy there may be a chief magistrate, invested with a particular authority, or an assembly of the people to be consulted on some occasions. Or, lastly, in a monarchic

 Difference between Form of Government and Manner of Governing.

state, important affairs may be laid before a senate, &c. But these accidental circumstances do by no means change the form of the government; neither is there a partition of the sovereignty on this account; the state still continues purely either democratic, aristocratic, or monarchic.

XXX. In a word, there is a wide difference between exercising a proper power and acting by a foreign and precarious authority, which may every minute be taken away by him who conferred it. Thus what constitutes the characteristics of mixed or compound commonwealths, and distinguishes them from simple governments, is, that the different orders of the state, who have a share in the sovereignty, possess the rights which they exercise by an equal title, that is to say, in virtue of the fundamental law, and not under the title of commission, as if the one was only the minister or executor of the other's will. We must, therefore, be sure to distinguish between the form of government and the manner of governing.

XXXI. These are the principal observations with respect to the various forms of government. Puffendorf explains himself in a somewhat different manner, and calls those governments irregular which we have styled mixed; and he gives the name of regular to the simple governments.

XXXII. But this regularity is only in idea; the true rule of practice ought to be that which is most conformable to the end of civil society, supposing men to be in their usual state, and taking the general course of things into the account, according to the experience of all countries and ages. Now on this footing, the states in which the whole depends on a single will, are so far from being happy that it is certain their subjects have the most frequent reason to lament the loss of their natural independence.

XXXIII. Besides, it is with the body politic as with the human body; there is difference between a sound and a cachectic state.

XXXIV. These disorders arise either from the abuse of the sovereign power or from the bad constitution of the state, and the

Defects of the Various Forms of Government.

causes thereof are to be sought for either in the defects of the governors, or in those of the government itself.

XXXV. In monarchies the defects of the person are when the king has not the qualifications necessary for reigning, when he has little or no attachments to the public good, and when he delivers his subjects up as a prey either to the avarice or ambition of his ministers, &c.

XXXVI. With regard to aristocracies, the defects of the persons are, when, by intrigue and other sinister methods, they introduce into the council either wicked men or such as are incapable of business, while persons of merit are excluded, when factions and cabals are formed, and when the nobles treat the populace as slaves, &c.

XXXVII. In fine, we sometimes see, also, in democracies, that their assemblies are disturbed with intestine broils, and merit is oppressed by envy, &c.

XXXVIII. In regard to the defects of government, they are of various kinds. For example, if the laws of the state be not conformable to the natural genius of the people, tending to engage in a war a nation that is not naturally warlike, but inclined to the peaceful arts; or if they be not agreeable to the situation and the natural products of the country; thus it is bad conduct not to promote commerce and manufactures in a province well suited for that purpose, and abounding with the materials of trade. It is also a defect of government, if the constitution of the state renders the dispatch of affairs very slow or difficult, as in Poland, where the opposition of a single member dissolves the diet.

XXXIX. It is customary to give particular names to these defects in government. Thus the corruption of monarchy is called tyranny. Oligarchy is the abuse of aristocracy; and the abuse of democracy is called ochlocracy. But it often happens that these words denote less a defect or disorder in the state, than some particular passion or disgust in those who use them.

XL. To conclude this chapter, we have only to take some

notice of those compound forms of government which are formed by the union of several particular states. These may be defined an assemblage of perfect governments, strictly united by some particular bond, so that they seem to make but a single body with respect to the affairs which interest them in common, though each preserves its sovereignty full and entire, independently of the others.

XLI. This assemblage is formed either by the union of two or more distinct states under one and the same king; as, for instance, England, Scotland, and Ireland, before the union lately made between England and Scotland, or when several independent states agree among themselves to form but a single body; such are the united provinces of the Netherlands and the Swiss cantons.

XLII. The first kind of union may happen either by marriage or by succession, or when a people choose for their king the sovereign of another country; so that those different states come to be united under a prince, who governs each in particular by its fundamental laws.

XLIII. As to the compound governments, formed by the perpetual confederacy of several states, it is to be observed, that this is the only method by which several small governments, too weak to maintain themselves separately against their enemies, are enabled to preserve their liberties.

XLIV. These confederate states engage to each other only to exercise, with common consent, certain parts of the sovereignty, especially those which relate to their mutual defense against foreign enemies. But each of the confederates retains an entire liberty of exercising, as it thinks proper, those parts of the sovereignty which are not mentioned in the treaty of union as parts that ought to be exercised in common.

XLV. Lastly, it is absolutely necessary in confederate states to ascertain a time and place for assembling, when occasion requires, and to invest some member with a power of convening the assembly for extraordinary affairs, and such as will not admit of delay.

What is the best Form of Government?

XLVI. It is certainly one of the most important questions in politics, and has most exercised the men of genius to determine *the best form of government.*

XLVII. Every form of government has its advantages and inconveniences inseparable from it. It would be in vain to seek for a government absolutely perfect; and however perfect it might appear in speculation, yet it is certain that in practice, and under the administration of men, it will ever be attended with some particular defects.

XLVIII. But though we cannot arrive at the summit of perfection in this respect, it is nevertheless certain that there are different degrees, which prudence must determine. That government ought to be accounted the most complete which best answers the end of its institution, and is attended with fewest inconveniences.

XLIX. Disputes on this subject are of a very ancient date; and there is nothing more interesting upon the topic than what we read in the father of history, Herodotus, who relates what passed in the council of the seven chiefs of Persia, when the government was to be reëstablished after the death of Cambyses, and the punishment of the Magus, who had usurped the throne under the pretext of being Smerdis, the son of Cyrus.

L. Otañes was of opinion that Persia should be formed into a republic, and spoke nearly in the following strain: "I am not of opinion that we should lodge the government in the hands of a single person. You know to what excess Cambyses proceeded, and to what degree of insolence the Magus arrived. How can the state be well governed in a monarchy where a single person is permitted to act according to his pleasure? An authority uncontrolled corrupts the most virtuous man, and defeats his best qualities. Envy and insolence flow from riches and prosperity; and all other vices are derived from those two sources. Kings hate virtuous men who oppose their unjust designs, but caress the wicked who favor them. A single person cannot see every thing with his own eyes; he often lends a favorable ear to false accusations; he subverts the laws and customs of the country; he

attacks the chastity of women, and wantonly puts the innocent to death. When the people have the government in their own hands, the equality among the members prevents all those evils. The magistrates are, in this case, chosen by lot; they render an account of their administration, and they form all their resolutions in common with the people. I am, therefore, of opinion that we ought to reject monarchy and introduce a popular government, because we rather find these advantages in a multitude than in a single person." Such was the harangue of Otanes.

LI. But Magabyses spoke in favor of aristocracy. "I approve," said he, "of the opinion of Otanes with respect to exterminating monarchy, but I believe he is wrong in endeavoring to persuade us to trust the government to the discretion of the people; for surely nothing can be imagined more stupid and insolent than the giddy multitude. Why should we reject the power of a single man, to deliver up ourselves to the tyranny of a blind and disorderly populace? If a king set about an enterprise, he is at least capable of listening to advice; but the people are a blind monster, devoid of reason and capacity. They are strangers to decency, virtue, and their own interests. They do every thing precipitately, without judgment, and without order, resembling a rapid torrent which cannot be stemmed. If, therefore, you desire the ruin of the Persians, establish a popular government. As to myself, I am of opinion that we should make choice of virtuous men, and lodge the government in their hands." Such was the sentiment of Magabyses.

LII. After him Darius spoke in the following terms: "I am of opinion that there is a great deal of good sense in the speech which Magabyses has made against a popular state; but I also think that he is not entirely in the right when he prefers the government of a small number to monarchy. It is certain that nothing can be imagined better or more perfect than the administration of a virtuous man. Besides, when a single man is master, it is more difficult for the enemy to discover his secret counsels and resolutions. When the government is in the hands of many, it is impossible but enmity and hatred must arise among

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them ; for, as every one desires his opinion to be followed, they gradually become mutual enemies. Emulation and jealousy divide them, and then their aversions run to excess. Hence arise seditions ; from seditions murders ; and from murders a monarch insensibly becomes necessary. Thus the government at length is sure to fall into the hands of a single person. In a popular state, there must needs be a great store of malice and corruption. It is true, equality does not generate hatred ; but it foment friendship among the wicked, who support each other till some person or other, who by his behavior has acquired an authority over the multitude, discovers the frauds, and exposes the perfidy of those villains. Such a man shows himself really a monarch ; and hence we know that monarchy is the most natural government, since the seditions of aristocracy and the corruption of democracy are equal inducements for our uniting the supreme power in the hands of a single person."

The opinion of Darius was approved, and the government of Persia continued monarchic. We thought this passage of history sufficiently interesting to be related on this occasion.

LIII. It has been said of the Romans, that, so long as they fought for their own interests, they were invincible ; but as soon as they became slaves, under absolute masters, their courage failed, and they asked for no more than bread and public diversions.

LIV. On the contrary, in states where the people have some share in the government, every individual interests himself in the public good, because each, according to his quality or merit, partakes of the general success, or feels the loss sustained by the state. This is what renders men active and generous, what inspires them with an ardent love of their country, and with an invincible courage, so as to be proof against the greatest misfortunes.

LV. When Hannibal had gained four victories over the Romans, and killed more than two hundred thousand of that nation, when, much about the same time, the two brave Scipios perished in Spain, not to mention several considerable losses at sea

and in Sicily, who could have thought that Rome could have withstood her enemies? Yet the virtue of her citizens, the love they bore their country, and the interest they had in government, augmented the strength of that republic in the midst of her calamities, and at last she surmounted every difficulty. Among the Lacedæmonians and Athenians we find several examples to the same point.

LVI. These advantages are not found in absolute governments. We may justly affirm that it is an essential defect in them not to interest the people in their preservation; that they are too violent, tending too much to oppression, and very little to the good of the people.

CHAPTER X.

Of the Duties of Citizens in General.

I. IN accordance with our plan, we must here treat of the duties of citizens. Puffendorf has given us a clear and distinct idea of them in the last chapter of his *Duties of a Man and a Citizen*. We shall follow him step by step.

II. The duties of citizens are either general or particular; and both flow from their state and condition.

III. All citizens have this in common, that they live under one and the same government, and that they are members of the same state. From these relations the general duties arise.

IV. But as they have different employments, enjoy different posts in the state, and follow different professions, hence also arise their particular duties.

V. It is also to be observed, that the duties of citizens suppose and include those of man, considered simply as such, and as a member of human society in general.

VI. The general duties of citizens have for their object

Duties of Citizens.

either the governors of the state or the whole body of the people, viz : their country or the individuals among their fellow-citizens.

VII. As to governors of the state, every one owes them that respect, fidelity, and obedience which their character demands. Hence it follows that we ought to be contented with the present government, and to form no cabals nor seditions for its overthrow.

VIII. With respect to the whole body of the state, a good citizen makes it his rule to prefer the public welfare to every thing else, bravely to sacrifice his fortune, and his private interests, and even his life, for the preservation of the state ; and to employ all his abilities and his industry to advance the honor and to procure the advantage of his native country.

IX. Lastly, the duty of a citizen to his fellow-citizens consists in living with them, as much as he possibly can, in peace and strict union, in being mild, complaisant, affable, and obliging to each of them, in creating no trouble by a rude or litigious behavior, and bearing no envy or prejudice against the happiness of others, &c.

X. As to the particular duties of citizens, they are connected with the particular employments which they follow in society. We shall here lay down some general rules in regard to this matter.

1. A citizen ought not to aspire after any public employment, nor even to accept of it, when he is sensible that he is not duly qualified for it. 2. He ought not to accept of more employments than he can discharge. 3. He should not use unlawful means to obtain public offices. 4. It is even sometimes a kind of justice not to seek after certain employments, which are not necessary to us, and which may be as well filled by others, for whom they are perhaps more adapted. 5. He ought to discharge the several functions of the employments he has obtained with the utmost application, exactness, and fidelity.

XI. Nothing is more easy than to apply these general maxims to the particular employments of society, and to draw inferences proper to each of them ; as, for instance, with respect to ministers

and counselors of state, ministers of religion, public professors, magistrates and judges, officers of the army and soldiers, receivers of taxes, ambassadors, &c.

XII. The particular duties of the citizen cease with the public charges whence they arise. But as to the general duties, they subsist so long as a person remains subject to the state.

XIII. It is a right inherent in all free people, that every man should have the liberty of removing out of the commonwealth if he thinks proper. In a word, when a person becomes a member of a state, he does not thereby renounce the care of himself and his own private affairs. On the contrary, he seeks a powerful protection, under the shelter of which he may procure to himself both the necessaries and the conveniences of life. Thus the people of a state cannot be denied the liberty of settling elsewhere, in order to procure those advantages which they do not enjoy in their native country.

XIV. On this occasion there are, however, certain maxims of duty and decency which cannot be dispensed with.

1. It would be contrary to the duty of a good citizen to abandon his native country at an unseasonable juncture, and when the state has a particular interest that he should stay at home.

2. If the laws of the country have determined any thing on this point, we must be determined by them; for we have consented to those laws in becoming members of the state.

3. The Romans forced no person to continue under their government, and Cicero* highly commends this maxim, calling it the surest foundation of liberty, "which consists in being able to preserve or renounce our right as we think proper."

XV. Some propose this question, whether citizens can go out of the state in great companies? On this point Grotius and Puffendorf are of opposite sentiments. As for my own part, I am of opinion that it can hardly happen that they should go out of the state in large companies, except in one or the other of these

* O excellent and divine laws, enacted by our ancestors in the beginning of the Roman empire—let no man change his city against his will, nor let him be compelled to stay in it. These are the surest foundations of our liberty, that every one should have it in his power either to preserve or relinquish his right.

Right of Resistance.

two cases : either when the government is tyrannical, or when a multitude of people cannot subsist in the country ; as when manufacturers, for example, or other tradesmen, cannot find the means of making or distributing their commodities. Under these circumstances, they may retire if they will, and they are authorized so to do by virtue of a tacit exception.

XVI. 1. Men have established civil society and government for their own good, to extricate themselves from troubles, and to be rescued from the evils of a state of nature. But it is highly evident, that, if the people were obliged to suffer every oppression from their government, and never to resist its encroachments, they would be reduced to a far more deplorable state than that which they attempted to avoid by the institution of sovereignty. It can never, surely, be presumed that this was the intention of mankind.

XVII. 2. Even a people who have submitted to an absolute government, have not thereby forfeited the right of asserting their liberty, and taking care of their preservation when they find themselves reduced to the utmost misery. Absolute sovereignty in itself is no more than the highest power of doing good. Now the highest power of procuring the good of a person, and the absolute power of destroying him at pleasure, have no connection with each other. Let us, therefore, conclude that never any nation had an intention to submit its liberties in such a manner as never to have it in their power to resist, not even for their own preservation.

XVIII. "Suppose," says Grotius, "one had asked those who first formed the civil laws, whether they intended to impose on all the subjects the fatal necessity of dying rather than take up arms to defend themselves against the unjust violence of their sovereign. I know not whether they would have answered in the affirmative. It is rather reasonable to believe they would have declared that the people ought not to endure all manner of injuries, except, perhaps, when matters are so situated that resistance would infallibly produce very great trouble in the state, or tend to the ruin of many innocent people."

XIX. We have already proved that no person can renounce his liberty to such a degree as that here mentioned. This would be selling his own life, that of his children, his religion, in a word, every advantage he enjoys, which it is not certainly in any man's power to do. This may be illustrated by the comparison of a patient and his physician.

XX. These are truths of the last importance. It is highly proper they should be known, not only for the safety and happiness of nations, but also for the advantage of good and wise magistrates.

XXI. They who are well acquainted with the frailty of human nature, are always diffident of themselves; and wishing only to discharge their duty, are contented to have bounds set to their authority, and by such means to be hindered from doing what they ought to avoid. Taught by reason and experience that the people love peace and good government, they will never be afraid of a general insurrection so long as they take care to govern with moderation and justice.

XXII. But it may be said that a revolt against the supreme power includes a contradiction; for if this power is supreme, there is none superior to it. By whom then shall it be judged? If the sovereignty still inheres in the people, they have not transferred their right; and if they have transferred it, they are no longer masters of it.

XXIII. This difficulty supposes the point in question, namely, that the people have divested themselves so far of their liberty that they have given full power to the government to treat them as it pleases, without having in any case reserved to themselves the power of resisting. *This is what no people ever did nor ever could do.* There is, therefore, no contradiction in the present case. *A power, given for a certain end, is limited by that very end.* The supreme power acknowledges none above itself.

XXIV. It certainly belongs to those who have given any person a power which he had not of himself, to judge whether he uses it agreeably to the end for which it was conferred.

MAGISTRATES.

XXV. Magistrates ought to use all possible application to understand the constitution and nature of the government. They ought not in this respect to be content with a general and superficial knowledge. They should enter into particulars, and carefully examine into the governments, both state and general, until a complete practical knowledge of their power has been acquired.

XXVI. We have already shown that virtue in general consists in that strength of mind which enables us not only to consult right reason on all occasions, but also to follow her counsels with ease, and effectually to resist every thing capable of giving us a contrary bias.

XXVII. This single idea of virtue is sufficient to show how necessary it is to all men. Besides, virtue in the magistrate has this advantage, that it is the surest method of inspiring the people with like principles. Their example has greater force frequently than law. It is, as it were, a living law, of more efficacy than precept.

XXVIII. The virtue most essential to a people is piety, which is certainly the foundation of all other virtues; but it must be solid and rational piety, free from superstition and bigotry. The motive which will most surely induce a full discharge of duty is the knowledge and fear of God. Without that, there is danger of running into every vice which the passions dictate; and soon the people will become victims of their pride, ambition, avarice, and cruelty. On the contrary, we may expect every thing that is good from those who love and regard God as a Supreme Being, on whom they are solely dependent, and to whom they are to render an account. Nothing can be so powerful a motive as this to engage men to perform their duty; nothing can so well cure them of dangerous mistakes. Religion can of itself contribute greatly to render mankind more obedient to the laws, more attached to their country, and more honest and charitable toward one another.

Those who have either a bad education, or comparatively none

at all, make no scruple to violate the best political institutions, whereas they who have been properly trained up, cheerfully conform to all good institutions. In fine, nothing is more conducive to the good order of society than to educate the people, and inspire them in the earlier part of life with the principles of the Christian religion, purged from all human inventions. For this religion embraces the most perfect scheme of morality; the maxims of which are extremely well adapted for promoting the welfare and happiness of society.

GOVERNMENT.

XXIX. It is the duty of government to establish good laws for the settling of such affairs as the people have most frequent occasion to transact with each other. These laws ought to be just, equitable, clear, without ambiguity and contradiction, useful and accommodated to the condition, genius, and pursuits of the people, that by their means differences may be easily determined.

But they should not be multiplied without necessity. And it would be of no use to make good laws, if the people are suffered to violate them with impunity. Government ought, therefore, to see them properly executed, and to punish the delinquent, without exception of persons, according to the quality and degree of the offense.

XXX. It is even sometimes proper to punish severely at first, and there are circumstances in which it is clemency to make such early example as shall stop the course of iniquity. But it is of the highest importance, and justice and the public good require that the severity of the laws be exercised not only upon persons of humble position and moderate fortune, but also upon the wealthy and powerful. The higher a man's birth is, says Juvenal, or the more exalted he is in position and dignity, the more enormous is the crime he commits.

XXXI. With regard to taxes, since the people are obliged to pay them only as they are necessary to defray the expenses of the state or government they have established, the government ought to exact no more than the public necessities, or the signal advan-

Duties of Government.

tage of the state require. Government ought also to see that the people be incommoded as little as possible by the taxes laid upon them. There should also be a just proportion in the tax of every individual, and there must be no exception, immunity, or any discrimination whatever, which may turn to the disadvantage of others.

XXXII. Since men first joined in civil societies to screen themselves from the injuries and malice of others, and to procure all the conveniences and comforts which can render life commodious and happy, it is the duty of those in authority to use all lawful means to maintain order and peace in community by a strict execution of the laws, to the end that the citizens obtain all the advantages which mankind may reasonably propose to themselves by joining in society.

XXXIII. When the people are not within the rule of the law, their perpetual intercourse easily furnishes them opportunities of injuring one another. And nothing is more contrary to the nature and end of civil government than the citizen, by private force, redressing the wrongs he has suffered.

XXXIV. We shall here add a beautiful passage from M. de la Bruiere upon this subject: "What would it avail me, or any of my fellow subjects, that my sovereign was successful and crowned with glory—that my country was powerful and the terror of neighboring nations—if I were forced to lead a melancholy and miserable life under the burthen of oppression and indigence? If, while I was secured from the incursions of a foreign enemy, I found myself exposed at home to the sword of an assassin; and was less in danger of being robbed or massacred in the darkest nights, and in a thick forest, than in the public streets? If safety, cleanliness, and good order, had not rendered living in towns so pleasant, and had not only furnished them with the necessaries, but, moreover, with all the sweets and conveniences of life? If being weak and defenseless, I were encroached upon in the country by every neighboring great man? If so good a provision had not been made to protect me against his injustice? If I had not at hand so many, and such excellent masters, to educate my chil-

dren in those arts and sciences which will one day make their fortune? If the conveniency of commerce had not made good, substantial stuffs for my clothing, and wholesome food for my nourishment, both plentiful and cheap? If, to conclude, the care of my sovereign had not given me reason to be as well contented with my fortune as his princely virtue must needs make him with his?"

CHAPTER XI.

Right to Punish.

I. THE principal end of civil government and society is to secure to mankind all their natural advantages, and especially their lives. This end necessarily requires that the state should have some right over the lives of the citizens, either in an *indirect manner*, for the defense of the state, or in a *direct manner*, for the punishment of crimes.

II. The power of the state over the lives of the citizens, with respect to the defense of the state, regards the right of war. Here we intend to speak only of the power of inflicting punishments.

III. The first question which presents itself, is to know the origin and foundation of this part of the sovereign power; a question which cannot be answered without some difficulty. Punishment, it is said, is an evil which a person suffers in a compulsive way. A man cannot punish himself; and, consequently, it seems that individuals could not transfer to the state a right which they had not over themselves.

IV. Some civilians pretend that when a state inflicts punishments on the citizens, it does it by virtue of their own consent; because, by submitting to that authority, they have promised to

How that Right is Derived.

acquiesce in every thing that that authority should do with respect to them ; and, in particular, a citizen who determines to commit a crime, consents thereby to suffer the punishments established against the delinquent.

V. But it seems difficult to determine the right of the state on a presumption of this nature, especially with respect to capital punishments ; neither is it necessary to have recourse to this pretended consent of criminals, in order to establish the vindictive power. It is better to say, that the right of punishing malefactors derives its origin from that which every individual originally had in the society of nature, to repel the injuries committed against himself, or against the members of the society ; which right has been yielded and transferred to the state.

VI. In a word, the right of executing the laws of nature, and of punishing those who violate them, belongs originally to society in general, and to each individual in particular ; otherwise, the laws, which nature and reason impose on man, would be entirely useless in a state of nature, if nobody had the power of putting them in execution, or of punishing the violations of them.

VII. Whoever violates the laws of nature, testifies thereby that he tramples on the maxims of reason and equity which God has prescribed for the common safety ; and thus he becomes an enemy of mankind. Since, therefore, every man has an incontestible right to take care of his own preservation and that of society, he may, without doubt, inflict on such a person punishments capable of producing repentance in him, of hindering him from committing the like crimes for the future, and even of deterring others by his example. In a word, the same laws of nature which prohibit vice, do also confer a right of pursuing the perpetrator of it, and of punishing him in a just proportion.

VIII. It is true, in a state of nature, these kinds of chastisements are not inflicted by authority, and the criminal might happen to shelter himself from the punishments he has to dread from other men, or even repel their attacks. But the right of punishment is not, for that, either less real or less founded. The difficulty of putting it in execution does not destroy it. This was

one of the inconveniences of the primitive state, which men have efficaciously remedied by the establishment of sovereignty.

IX. By following these principles, it is easy to comprehend that the right of a state to punish crimes is no other than that natural right which human society and every individual had originally to execute the law of nature, and to take care of their own safety. This natural right has been yielded and transferred to the state, which, by means of the authority with which it is invested, exercises it in such a manner that it is difficult for wicked men to evade it. Besides, whether we call this natural right of punishing crimes the vindictive power, or whether we refer it to a kind of *right of war*, is a matter of indifference, neither does it change its nature on that account.

X. This is the true foundation of the right of the state with respect to punishments. This being granted, I define punishment an evil with which the law threatens those who are disposed to commit wrong, and which really inflicts, in a just proportion, whenever they violate them, independently of the reparation of the damage, with a view to some future good; and, finally, for the safety and peace of society.

XI. I say, first, that *punishment is an evil*, and this evil may be of a different nature, according as it affects the life of a person, his body, his reputation, or his estate. Besides, it is indifferent whether this evil consists in hard and toilsome labor, or in suffering something painful.

XII. I add, in the second place, that it is the state which awards punishments; not that every punishment in general supposes sovereignty, but because we are here speaking of the right of punishing in society, and as the branch of the supreme power. It is, therefore, the magistrate alone who is empowered to award punishments in society; but individuals cannot do themselves justice without encroaching on the rights of the state.

XIII. I add, third, that punishment is inflicted, *independently of the reparation of damage*, to show that these are two things very distinct, and ought not to be confounded. Every crime is attended with two obligations; the first is to repair the

Duty of Government to Punish.

injury committed, and the second to suffer the punishment; the delinquent ought to satisfy both. It is also to be observed on this occasion, that the right of punishment in civil society is transferred to the magistrate, who may by his own authority pardon a criminal; but this is not the case with respect to the right of satisfaction or reparation of damages. The magistrate cannot acquit the offender in this article, and the injured person always retains his right; so that he is wronged if he be hindered from obtaining due satisfaction.

XIV. Lastly, by saying *that punishment is inflicted with a view to some good*, we point out the end which the state ought to have in view in inflicting punishments; and this we shall more particularly explain.

XV. The state, as such, has not only a right, but is also obliged to punish crimes. The use of punishment is so far from being contrary to equity, that it is absolutely requisite for the public tranquility. The supreme power would be useless were it not invested with a right, and armed with a force sufficient to deter the wicked by the apprehension of some evil, and to make them suffer that evil when they injure society. It was even necessary that this power should extend so far as to make them suffer the greatest of natural evils, which is *death*, in order effectually to repress the most daring audaciousness, and, as it were, to balance the different degrees of human wickedness by a sufficient counterpoise.

XVI. Such is the right of the state. But if it has a right to punish, the criminal must be also under some obligation in this respect; for we cannot possibly conceive a right without an obligation corresponding to it. But wherein does this obligation of the criminal consist? Is he obliged to betray himself, and voluntarily expose himself to punishment? I answer, that this is not necessary for the end proposed in the establishment of punishments; nor can we reasonably require that a man should thus betray himself; but this does not hinder him from being under a real obligation.

XVII. 1. It is certain that when there is a simple pecuniary

punishment, to which a man has been lawfully condemned, he ought to pay it without being forced by the magistrate; not only prudence requires it, but also the rules of justice, according to which we are bound to repair any injury we have committed, and to obey lawful judges.

XVIII. 2. What relates to corporeal, and especially to capital punishments, is attended with greater difficulty. Such is our natural fondness for life, and aversion to infamy, that a criminal cannot be under an obligation of accusing himself voluntarily, and presenting himself to punishment; and, indeed, neither the public good nor the rights of the person entrusted with the supreme authority demand it.

XIX. 3. In consequence of this same principle, a criminal may innocently seek his safety in flight, and is not obliged to remain in prison, if he perceives the doors open, or if he can easily force them. But it is not lawful for him to procure his liberty by the commission of a new crime, as by cutting the throats of the jailors, or by killing those sent to apprehend him.

XX. 4. But, in fine, we suppose that the criminal is, if known that he is taken, that he cannot make his escape from prison, and that, after a mature examination or trial, he is convicted of the crime, and, consequently, condemned to condign punishment; he is in this case certainly obliged to undergo the punishment, and to acknowledge the lawfulness of his sentence; so that there is no injury done him, nor can he reasonably complain of any one but himself; much less can he withdraw from punishment by violence, and oppose the magistrate in the exercise of his right. In this properly consists the obligation of the criminal with respect to punishment. Let us now inquire more particularly into the end the state ought to consider in inflicting punishment.

XXI. In general, it is certain that the state never ought to inflict punishments but with a view to some public advantage. To make a man suffer merely because he has done a thing, and to attend only to what has passed, is a piece of cruelty condemned by reason; for, after all, it is impossible that the fact

Object of Punishment.

should be undone. In short, the right of punishing is a part of sovereignty; now sovereignty is founded ultimately on a beneficent power. It follows, therefore, that even when the chief ruler makes use of his power of the sword, he ought to aim at some advantage or future good, agreeably to what is required of him by the very nature and foundation of his authority.

XXII. The principal end of punishment is, therefore, the welfare of society; but as there may be different means of arriving at this end, according to different circumstances, the state also, in inflicting punishments, proposes different and particular views, ever subordinate, and all finally reducible to the principal end above mentioned. What we have said agrees with the observation of Grotius: "In punishments we must either have the good of the criminal in view, or the advantage of him whose interest it was that the crime should not have been committed, or the good of all indifferently."

XXIII. Hence the state sometimes proposes to correct the criminal, and make him lose the vicious habit, so as to cure the evil by its contrary, and to take away the sweets of the crime by the bitterness of the punishment. This punishment, if the criminal is reformed by it, tends to the public good. But, if he should persevere in his wickedness, the state must have recourse to more violent remedies.

XXIV. Sometimes the magistrate proposes to deprive criminals of the means of committing new crimes; as, for example, by taking from them the arms which they might use, by shutting them up in prison, or even by putting them to death. At the same time, he takes care of the public safety, not only with respect to the criminals themselves, but also with regard to those inclined to commit the like crimes, in deterring them by those examples. For this reason, nothing is more agreeable to the end of punishment than to inflict it with such a solemnity as is most proper to make an impression on the popular mind.

XXV. All these particular ends of punishment ought to be constantly subordinate, and referred to the principal end, namely, the safety of the public; and the state ought to use them all as

means of obtaining that end ; so that it should not have recourse to the most rigorous punishments, till those of greater lenity are insufficient to procure the public tranquillity.

XXVI. But here a question arises, whether all actions contrary to the laws can be lawfully punished. I answer, that the very end of punishment, and the constitution of human nature, evince there may be actions, in themselves evil, which, however, it is not necessary for human justice to punish.

XXVII. And, 1, acts purely internal, or simple thoughts, which do not discover themselves by any external acts prejudicial to society ; for example, the agreeable idea of a bad action, the desire of committing it, the design of it without proceeding to the execution, &c. All these are not subject to the severity of human punishment, even though it should happen that they are afterwards discovered.

XXVIII. On this subject we must, however, make the following remarks : The first is, that if this kind of crimes be not subject to human punishment, it is because the weakness of man does not permit, even for the good of society, that he should be treated with the utmost rigor. We ought to have a just regard for humanity in things which, though bad in themselves, do not greatly affect the public order and tranquillity. The second remark is, that though acts purely internal are not subject to civil punishment, we must not for this reason conclude that these acts are not under the direction of the civil laws. We have before established the contrary. In a word, it is evident that the laws of nature expressly condemn such actions, and that they are punished by the Deity.

XXIX. 2. In a word, we must necessarily leave unpunished those common vices, which are the consequences of a general corruption ; as, for instance, ambition, avarice, inhumanity, ingratitude, hypocrisy, envy, pride, and wrath. It is sufficient to punish those vices when they prompt men to enormous and overt acts.

XXX. It is not even always necessary to punish crimes in themselves punishable, for there are cases in which the magistrate

Consideration of the Public Good.

may pardon; and of this we may judge by the very end of punishment.

XXXI. The public good is the ultimate end of all punishment. If, therefore, there are circumstances in which by pardoning as much or more advantage is procured than by punishing, then there is no obligation to punish, and the state even ought to show clemency. Thus if the crime be concealed, or be only known to a few, it is not always necessary, nay, it would sometimes be dangerous to make it public by punishment; for many abstain from evil, rather from their ignorance of vice, than from a knowledge and love of virtue. Cicero observes, with regard to Solon's having no law against parricide, that this silence of the legislator has been looked upon as a great mark of prudence; for as much as he made no prohibition of a thing of which there had been yet no example, lest by speaking of it, he should seem to give the people a notion of committing it, rather than deter them from it.

We may also consider the personal services which the criminal or some of his family have done to the state, and whether he can still be of great advantage to it, so that the impression made by the sight of his punishment be not likely to produce so much good as he himself is capable of doing. Thus at sea, when the pilot has committed a crime, and there is none on board capable of navigating the ship, it would be destroying all those in the vessel to punish him. This example may also be applied to the general of an army.

In a word, the public advantage, which is the true measure of punishment, sometimes requires that the state should pardon, because of the great number of criminals. The prudence of government demands that the justice established for the preservation of society, should not be exercised in such a manner as to subvert the state.

XXXII. All crimes are not equal, and it is but equity there should be a due proportion between the crime and the punishment. We may judge of the greatness of a crime, in general, by its object, by the intention of malice of the criminal, and by the pre-

judice arising to society from it; and to this latter consequence the two others must be ultimately referred.

XXXIII. According to the dignity of the object, the action is more or less criminal. We must place in the first class those crimes which interest society in general; the next are those which disturb the order of civil society; and last of all, those which relate to individuals. The latter are more or less heinous, according to the value of the thing of which they deprive us. Thus he who slays his father commits a more horrid murder than if he had killed a stranger. A person who adds murder to robbery is more guilty than he who only strips the traveler of his money.

XXXIV. The greater or less degree of malice also contributes very much to the enormity of the crime, and is to be deduced from several circumstances.

1. From the motives which engage mankind to commit a crime, and which may be more or less easy to resist. Thus he who robs or murders in cold blood, is more culpable than he who yields to the violence of some furious passion.

2. We must also consider the circumstances of time and place in which the crime has been committed, the manner of committing it, the instruments used for that purpose, &c.

3. Lastly, we are to consider whether the criminal has made a custom of committing such a crime, or if he is but rarely guilty of it, whether he has committed it of his own accord, or been seduced by others, &c.

XXXV. We may easily perceive that the difference of these circumstances interests the happiness and tranquility of society, and, consequently, either augments or diminishes the enormity of the crime.

XXXVI. There are, therefore, crimes less or greater than others; and, consequently, they do not all deserve to be punished with equal severity.

1. The degree of punishment ought ever to be proportioned to the end of inflicting it, that is, to repress the insolence and malignity of the wicked, and to procure the internal peace and safety of the state. It is upon this principle that we must aug-

Different effects of Punishment.

ment or diminish the rigor of punishment. The punishment is too rigorous, if we can by milder means obtain the end proposed; and, on the contrary, it is too moderate when it has not a force sufficient to produce these effects, and when the criminals themselves despise it.

2. According to this principle, every crime may be punished as the public good requires, without considering whether there be an equal or less punishment for another crime which in itself appears more or less heinous. Thus robbery, for instance, is of its own nature a less crime than murder; and yet highwaymen may, without injustice, be punished with death as well as murderers.

3. The equality which the state ought ever to observe in the exercise of justice consists in punishing those alike who have trespassed alike; and in not pardoning a person, without very good reason, who has committed a crime for which others have been punished.

4. It must be also observed, that we cannot multiply the kinds and degrees of punishment *in infinitum*; and, as there is no greater punishment than death, it is necessary that certain crimes, though unequal in themselves, should be equally subject to capital punishment. All that can be said is, that death may be more or less terrible, according as we employ a milder or shorter method to deprive a person of life.

5. We ought as much as possible to incline to the merciful side, when there are not strong reasons for the contrary. This is the second part of clemency. The first consists in a total exemption from punishment, when the good of the state permits it. This is also one of the rules of the Roman law.

6. On the contrary, it is sometimes necessary and convenient to heighten the punishment, and to set such an example as may intimidate the wicked, when the evil can be prevented only by violent remedies.

7. The same punishment does not make the same impressions on all kinds of people, and, consequently, has not the same force to deter them from vice. We ought, therefore, to consider, both in the general penal sanction, and in the application of it, the

person of the criminal, and in that all those qualities of age, sex, state, riches, strength, and the like, which may either increase or diminish the sense of punishment. A particular fine, for instance, will distress a beggar, while it is nothing to a rich man. The same mark of ignominy will be very mortifying to a person of honor and quality, which would pass for a trifle with a vulgar fellow. Men have more strength to support punishments than women, and full grown people more than those of tender years, &c. Let us also observe, that it belongs to the justice and prudence of government always to follow the order of judgment and of the judiciary procedure in the infliction of punishments. This is necessary, not only that we may not commit injustice in an affair of such importance, but also that the state may be secured against all suspicion of injustice and partiality.

XXXVII. What we have said relates to punishments inflicted for crimes of which a person is the sole and proper author. With respect to crimes committed by several, the following observations may serve as principles :

1. It is certain that those who are really accomplices in the crime ought to be punished in proportion to the share they have in it, and according as they ought to be considered as principal causes, or subordinate and collateral instruments. In these cases such persons suffer rather for their own crime than for that of another.

2. As for crimes committed by a body or community, those only are really culpable who have given their actual consent to them; but they who have been of a contrary opinion are absolutely innocent. Thus Alexander, having given orders to sell all the Thebans, after the taking of their city, excepted those who, in the public deliberations, had opposed the breaking of the alliance with the Macedonians.

3. Hence it is, that, with respect to crimes committed by a multitude, reasons of state and humanity direct that we should principally punish those who are ringleaders, and pardon the rest. The severity of the penalty to some will repress the audaciousness

Consequences of Punishment.

of the most resolute ; and clemency to others will gain the hearts of the multitude.

4. If the ringleaders have sheltered themselves by flight or otherwise, or if they have all an equal share in the crime, we must have recourse to a decimation, or other means, to punish some of them. By this method, the terror reaches all, while but few fall under the punishment.

XXXVIII. Besides, it is a certain and inviolable rule, that no person can be lawfully punished for the crime of another in which he has had no share. All merit and demerit is entirely personal and incommunicable ; and we have no right to punish any but those who deserve it.

XXXIX. It sometimes happens, however, that innocent persons suffer on account of the crimes of others ; but we must make two remarks on this subject :

1. Not every thing that occasions uneasiness, pain, or loss to a person, is properly a punishment ; for example, when citizens suffer some grievances from the miscarriage and crimes of others, it is not in respect to them a punishment, but a misfortune.

The second remark is, that these kinds of evils, or indirect punishments, if we may call them so, are inseparable from the constitution of human affairs.

XL. Thus if we confiscate the effects of a person, his children suffer indeed for it ; but it is not properly a punishment to them, since those effects ought to belong to them only on supposition that their father had kept them till his death. In a word, we must either almost entirely abolish the use of punishments, or acknowledge that these inconveniences, inseparable from the constitution of human affairs, and from the particular relations which men have to each other, have nothing in themselves unjust.

